

3-17-2015

State v. Weatherly Clerk's Record Dckt. 42777

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IN THE SUPREME COURT OF THE STATE OF IDAHO

THE STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	SUPREME COURT NO. 42777
)	
v.)	
)	
TOBY G. WEATHERLY,)	
)	
Defendant-Appellant.)	

CLERK'S RECORD

Appeal from the District Court of the Second Judicial District
of the State of Idaho, in and for the County of Nez Perce

BEFORE THE HONORABLE JAY P. GASKILL, DISTRICT JUDGE

Counsel for Respondent

Mr. Lawrence G. Wasden
Attorney General
Post Office Box 83720
Boise, Idaho 83720-0010

Counsel for Appellant

Ms. Sara B. Thomas
State Appellate PD
3050 N Lake Harbor Ln Ste 100
Boise, ID 83703

Date: 2/19/2015

Second Judicial District Court - Nez Perce County

User: BDAVENPORT

Time: 12:14 PM

ROA Report

Page 1 of 5

Case: CR-2014-0004601 Current Judge: Jay P. Gaskill DJ

Defendant: Weatherly, Toby Glenn

State of Idaho vs. Toby Glenn Weatherly

Date	Code	User		Judge
6/4/2014	NCRF	TRISH	New Case Filed-Felony	Michelle M. Evans
	PROS	TRISH	Prosecutor Assigned Justin J Coleman	Michelle M. Evans
	AFPC	TRISH	Affidavit Of Probable Cause	Michelle M. Evans
	MFPC	TRISH	Magistrate's Finding Of Probable Cause	Michelle M. Evans
	CRCO	TRISH	Criminal Complaint	Michelle M. Evans
	WARI	TRISH	Warrant Issued - Arrest Bond amount: 10000.00 Defendant: Weatherly, Toby Glenn	Michelle M. Evans
	XSEA	TRISH	Case Sealed	Michelle M. Evans
	STAT	TRISH	Case Status Changed: Inactive	Michelle M. Evans
6/5/2014	WART	TRISH	Warrant Returned Defendant: Weatherly, Toby Glenn	Michelle M. Evans
	XUNS	TRISH	Case Un-sealed	Michelle M. Evans
	STAT	TRISH	Case Status Changed: Pending	Michelle M. Evans
	ARRN	TRISH	Arraignment / First Appearance	Michelle M. Evans
	NORF	TRISH	Notification Of Rights-felony	Michelle M. Evans
		TRISH	Commitment, Held to Answer	Michelle M. Evans
	ORPD	MEENA	Defendant: Weatherly, Toby Glenn Order Appointing Public Defender Public defender Kwate Law Office PD 2014	Michelle M. Evans
	AFPD	MEENA	Affidavit of Financial Status and Order Appointing Public Defender	Michelle M. Evans
	CHJG	MEENA	Change Assigned Judge	Greg K. Kalbfleisch
	HRSC	MEENA	Hearing Scheduled (Preliminary Hearing 06/18/2014 01:30 PM)	Greg K. Kalbfleisch
6/6/2014	NTHR	BDAVENPORT	Notice Of Hearing	Jay P. Gaskill DJ
	BSET	TRISH	Bond Set at 5000.00	Greg K. Kalbfleisch
	RQDD	JENNY	Request For Discovery-defendant	Greg K. Kalbfleisch
6/10/2014	RSDP	JENNY	Response To Request For Discovery-plaintiff	Greg K. Kalbfleisch
	RQDP	JENNY	Request For Discovery-plaintiff	Greg K. Kalbfleisch
6/18/2014	MINE	MEENA	Minute Entry Hearing type: Preliminary Hearing Hearing date: 6/18/2014 Time: 1:56 pm Courtroom: Court reporter: Minutes Clerk: Cole Tape Number: ctrm 3 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: Nicholas Lepire	Greg K. Kalbfleisch
	BOUN	MEENA	Hearing result for Preliminary Hearing scheduled on 06/18/2014 01:30 PM: Bound Over (after Prelim)	Greg K. Kalbfleisch

Date: 2/19/2015

Second Judicial District Court - Nez Perce County

User: BDAVENPORT

Time: 12:14 PM

ROA Report

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Case: CR-2014-0004601 Current Judge: Jay P. Gaskill DJ

Defendant: Weatherly, Toby Glenn

State of Idaho vs. Toby Glenn Weatherly

Date	Code	User	Judge
6/19/2014	RSDP	JENNY	First Supplemental Response To Request For Discovery-plaintiff
	APTR	SHELLIE	Application For Transcript of Preliminary Hearing (D)
	INFO	MEENA	Information
	INFO	MEENA	Amended Information
6/20/2014	CHJG	MEENA	Change Assigned Judge
6/24/2014	ORDR	TERESA	Order to Prepare Transcript of Preliminary Hearing---CARLTON
6/25/2014	HRSC	MEENA	Hearing Scheduled (Arraignment 06/26/2014 01:15 PM)
		MEENA	Notice Of Hearing
	ORBO	MEENA	Order Binding Over
6/26/2014	DCHH	TERESA	Hearing result for Arraignment scheduled on 06/26/2014 01:15 PM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages
	PLEA	TERESA	A Plea is entered for charge: - NG (I18-2403 {F} Theft-Grand)
	PLEA	TERESA	A Plea is entered for charge: - NG (I18-3125 {F} Fraud-Possession of Financial Transaction Card, Number and/or FTC Forgery Devices)
	HRSC	TERESA	Hearing Scheduled (Jury Trial 10/06/2014 09:00 AM)
	HRSC	TERESA	Hearing Scheduled (Pretrial Motions 09/04/2014 03:30 PM)
	HRSC	TERESA	Hearing Scheduled (Final Pretrial 09/18/2014 03:30 PM)
6/27/2014	MINE	TERESA	Minute Entry Hearing type: Arraignment Hearing date: 6/26/2014 Time: 1:16 pm Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: April Smith
	ORDR	TERESA	Order Setting Jury Trial & Scheduling Proceedings
6/30/2014	TRAN	TERESA	Transcript Filed
7/10/2014	MISC	TERESA	Defendant's Response to Request for Discovery
8/29/2014	HRVC	TERESA	Hearing result for Pretrial Motions scheduled on 09/04/2014 03:30 PM: Hearing Vacated--NO MOTIONS FILED

Date: 2/19/2015

Second Judicial District Court - Nez Perce County

User: BDAVENPORT

Time: 12:14 PM

ROA Report

Page 3 of 5

Case: CR-2014-0004601 Current Judge: Jay P. Gaskill DJ

Defendant: Weatherly, Toby Glenn

State of Idaho vs. Toby Glenn Weatherly

Date	Code	User	Judge
9/9/2014	MISC	TERESA	2nd Supplemental Response to Request for Discovery--State Jay P. Gaskill DJ
9/18/2014	DCHH	TERESA	Hearing result for Final Pretrial scheduled on 09/18/2014 03:30 PM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages Jay P. Gaskill DJ
	HRSC	TERESA	Hearing Scheduled (Final Pretrial 09/30/2014 02:00 PM) Jay P. Gaskill DJ
	MINE	TERESA	Minute Entry Hearing type: Final Pretrial Hearing date: 9/18/2014 Time: 3:31 pm Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: April Smith Jay P. Gaskill DJ
	RSDP	SHELLIE	Third Supplemental Response To Request For Discovery-plaintiff Jay P. Gaskill DJ
9/22/2014	AMIN	TERESA	Second Amended Information Jay P. Gaskill DJ
	MISC	TERESA	State's Requested Instructions Jay P. Gaskill DJ
9/30/2014	DCHH	TERESA	Hearing result for Final Pretrial scheduled on 09/30/2014 02:00 PM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages Jay P. Gaskill DJ
	MINE	TERESA	Minute Entry Hearing type: Final Pretrial Hearing date: 9/30/2014 Time: 1:41 pm Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: April Smith Jay P. Gaskill DJ
	MISC	TERESA	Defendant's Proposed Jury Instructions Jay P. Gaskill DJ
10/1/2014	MISC	TERESA	4th Supplemental Response to Request for Discovery--State Jay P. Gaskill DJ
10/3/2014	MOTN	TERESA	Motion in Limine to Exclude Evidence--def Jay P. Gaskill DJ
10/6/2014	DCHH	TERESA	Hearing result for Jury Trial scheduled on 10/06/2014 09:00 AM: District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: 220 pages Jay P. Gaskill DJ

State of Idaho vs. Toby Glenn Weatherly

Date	Code	User	Judge
10/6/2014	MINE	TERESA	Minute Entry Hearing type: Jury Trial Hearing date: 10/6/2014 Time: 9:14 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: April Smith Jay P. Gaskill DJ
	PROS	TERESA	Prosecutor Assigned April A Smith Jay P. Gaskill DJ
	FOGT	TERESA	Found Guilty After Trial Guilty Count 1 Grand Theft Guilty Count 2 Criminal Possession of a Financial Transaction Card Persistent Violator Enhancement--Guilty of 2 prior Felony convictions Jay P. Gaskill DJ
	MISC	TERESA	Verdict--Count 1 & 2 guilty Jay P. Gaskill DJ
	MISC	TERESA	Verdict--Persistent Violator--guilty Jay P. Gaskill DJ
	HRSC	TERESA	Hearing Scheduled (Sentencing 11/20/2014 02:30 PM) Jay P. Gaskill DJ
	PSIV	TERESA	Presentence Investigation Ordered--due 11-13-14 Document sealed Jay P. Gaskill DJ
10/7/2014	MISC	TERESA	Instructions Submitted to the Jury 1 thru 25 Jay P. Gaskill DJ
	MISC	TERESA	Instructions Submitted to the Jury 01 thru 04 Jay P. Gaskill DJ
	ORDR	TERESA	PSI Order Jay P. Gaskill DJ
11/10/2014	MISC	TERESA	PSI received--copies delivered by messenger to Prosecutor and Greg Hurn 11-12-14 Document sealed Jay P. Gaskill DJ
11/20/2014	DCHH	TERESA	Hearing result for Sentencing scheduled on 11/20/2014 02:30 PM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages Jay P. Gaskill DJ
	ADVS	TERESA	Case Taken Under Advisement Jay P. Gaskill DJ
	HRSC	TERESA	Hearing Scheduled (Sentencing 11/25/2014 01:30 PM) Jay P. Gaskill DJ
	MINE	TERESA	Minute Entry Hearing type: Sentencing Hearing date: 11/20/2014 Time: 2:54 pm Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: April Smith Jay P. Gaskill DJ

Date: 2/19/2015

Second Judicial District Court - Nez Perce County

User: BDAVENPORT

Time: 12:14 PM

ROA Report

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Case: CR-2014-0004601 Current Judge: Jay P. Gaskill DJ

Defendant: Weatherly, Toby Glenn

State of Idaho vs. Toby Glenn Weatherly

Date	Code	User	Judge
11/25/2014	DCHH	TERESA	Hearing result for Sentencing scheduled on 11/25/2014 01:30 PM: District Court Hearing Held Court Reporter: Nancy Towler Number of Transcript Pages for this hearing estimated: less than 100 pages
	STAT	TERESA	Case Status Changed: closed pending clerk action
	SNIC	TERESA	Sentenced To Incarceration (I18-2403 {F} Theft-Grand) Confinement terms: Penitentiary determinate: 1 year. Penitentiary indeterminate: 4 years.
	SNIC	TERESA	Sentenced To Incarceration (I18-3125 {F} Fraud-Possession of Financial Transaction Card, Number and/or FTC Forgery Devices) Confinement terms: Penitentiary determinate: 1 year. Penitentiary indeterminate: 4 years.
	MINE	TERESA	Minute Entry Hearing type: Sentencing Hearing date: 11/25/2014 Time: 1:34 pm Courtroom: Court reporter: Nancy Towler Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: April Smith
	MISC	TERESA	Commitment
	PSIS	TERESA	Presentence Investigation Sealed In File Document sealed
12/2/2014	JDCV	TERESA	Judgment Of Conviction
	APSC	DEANNA	Appealed To The Supreme Court
	MOTN	DEANNA	Motion to Withdraw and to Appoint State Appellate Public Defender
	NTAP	DEANNA	Notice Of Appeal
12/3/2014	ORDR	DEANNA	Order Allowing Withdrawal of Attorney and Appointing SAPD office.
	ATTR	DEANNA	Defendant: Weatherly, Toby Glenn Attorney Retained Sara B Thomas
12/4/2014	NOTC	TERESA	Notice of Conviction
12/29/2014	NTAP	BDAVENPORT	Amended Notice Of Appeal
1/30/2015	NOTC	BDAVENPORT	Notice of Transcript Lodged
2/18/2015	NOTC	BDAVENPORT	Notice of Transcript Lodged

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 2923

FILED

2014 JUN 4 PM 2 55

PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

Defendant.

CASE NO. CR14-04501

AFFIDAVIT OF PROBABLE CAUSE FOR
WARRANT TO ISSUE PURSUANT TO
I.C.R. 4

Comes now the undersigned Deputy Prosecutor who on oath deposes and
says:

1. Affiant is a duly qualified Deputy Prosecutor with the Nez Perce County
Prosecutor's Office.

2. Affiant desires that a warrant issue for the arrest of the above-named
defendant for the crime(s) of: **COUNT I - GRAND THEFT, I.C. § 18-2403(3) and
18-2407(1)(b)(1), a felony; COUNT II - CRIMINAL POSSESSION OF A
FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND
FTC FORGERY DEVICES, I.C. § 18-3125(1), a felony.**

3. Affiant believes probable cause exists for the issuance of this
requested warrant; your affiant has attached to this Affidavit and incorporates by

reference herein an accurate copy of documents on file with the above-referenced law enforcement agency which form the basis for this request for a warrant.

J. Coleman

SUBSCRIBED and SWORN to before me this 4th day of June 2014.

JUDGE OR CLERK OF THE COURT

RECEIVED
MAR 10 2014

Law Supplemental Narrative:

Seq Name	Date	Supplemental Narratives Narrative
3 Sparks Tom	12:10:39 03/04/2014	LEWISTON POLICE DEPARTMENT CAP SHEET AND CASE DISPOSITION SHEET

DATE: 03-04-14

IN CUSTODY: ☐ YES
☒ NO

=====

DEFENDANT:

Name: Toby G. Weatherly
Address: 3525 Libby Street, Clarkston
Telephone: 208-816-3849

Security Number: [REDACTED]

=====

LEWISTON POLICE DEPARTMENT CASE NUMBER: 14-L443

OTHER AGENCIES RELATED CASE NUMBERS:

DATE OF INCIDENT: 01-10-14

TIME OF INCIDENT: 1616 hours

=====

CHARGES:

1. grand theft, 18-2407
2. criminal possession of a financial transaction card, 18-3125

=====

WITNESSES: (NAME, ADDRESS, PHONE): NONE

=====

CO-DEFENDANTS: NONE

=====

EVIDENCE:

1. video surveillance from Zions Bank

=====

SUMMARY (PROBABLE CAUSE): On 01-10-14 Jenna Weatherly reported to patrol officers that her brother-in-law/suspect, Toby Weatherly, had been inside her residence visiting her husband. After Toby left the residence, is when she and her husband noticed that two prepaid Visa credit cards were missing. After receiving statements in the mail of the usage of the two cards they reported it to the police. I was able to obtain video surveillance from Zions Bank. This subject looked like the photo of Toby Weatherly in Spillman. Toby made withdrawals from Zions Bank utilizing the stolen credit cards. Jenna Weatherly positively identified the subject on the video surveillance as her brother-in-law, Toby Weatherly, and requests to pursue this matter criminally. Due to the fact Toby lives in Washington, I am requesting a warrant.

=====

RECOMMENDATION: ☒ WARRANT
☐ SUMMONS

=====

OFFICERS/INVESTIGATORS:

1. Cpl. Dock White
2. Det. Tom Sparks

=====

PROSECUTOR to POLICE:

DATE:

- ☐ Charges filed
- ☐ Warrant
- ☐ Referred to Juvenile Services
- ☐ Prosecution delayed for further investigation
- ☐ Prosecution Declined
- ☐ Summons

Assigned Prosecutor:

=====

FURTHER INVESTIGATION REQUESTED:

- 1.
- 2.
- 3.

Police Follow-up due by:

=====

PROSECUTION DECLINED: (EXPLANATION)

=====

CASE DISPOSITION:

- ☐ Guilty plea as charged
- ☐ Guilty plea to other charge:
- ☐ Guilty verdict
- ☐ Not Guilty verdict
- ☐ Other:

03/04/2014
15:39

Lewiston Police Department
LAW Incident Table:

567
Page: 1

Incident Number: 14-L443

Nature: Theft

Case Number:

Image:

Addr= 3635 12TH ST

Area: SJHS SACAJAWEA JR H

City: Lewiston

ST: ID Zip: 83501

Contact: jena weatherly

Complainant& 156979

Lst: WEATHERLY

Fst: JENNA

Mid: RENEE

DOB:

SSN:

Adr= 3635 12TH ST

Rac: W Sx: F Tel: (208)791-1580 Cty: Lewiston

ST: ID Zip: 83501

Offense Codes: TPOT

Reported: TPOT Observed: TPOT

Circumstances:

Rspndg Officers: White Dock L

Rspnsbl Officer: White Dock L

Agency: LPD1

CAD Call ID: 1059134

Received By: Womack Amanda

Last RadLog: 19:09:32 01/10/2014 CMPLT

How Received: T Telephone

Clearance: RPT Written Incident Repo

When Reported: 16:16:38 01/10/2014

Disposition: ACT Disp Date: 01/11/2014

Occurrd between: 16:16:38 01/10/2014

Judicial Sts:

and: 16:16:38 01/10/2014

Misc Entry:

MO:

Narrative: (See below)

Supplement: (See below)

(See below)

&

INVOLVEMENTS:

Type	Record #	Date	Description	Relationship
NM	63712	01/10/2014	WEATHERLY, TOBY GLENN	Suspect
NM	156979	01/10/2014	WEATHERLY, JENNA RENEE	*Complainant
NM	156979	01/10/2014	WEATHERLY, JENNA RENEE	Victim
CA	1059134	01/10/2014	16:16 01/10/2014 Theft	*Initiating Call
PR	165699	03/04/2014	COMPACT DISC VIDEO ZIONS BA \$0	Evidence
PR	164053	01/11/2014	Credit/Deb Card VISA CASH C \$0	Stolen
PR	164054	01/11/2014	Credit/Deb Card VISA CASH C \$0	Stolen
PR	164055	01/11/2014	Credit/Deb Card CHEVRON FUE \$0	Stolen
EV	43814	03/04/2014	Surv Video Zions Bank	*Evidence Incident

LAW Incident Offenses Detail:

Offense Codes

Seq Code

Amount

1 TPOT Theft, Property, Other

0.00

LAW Incident Responders Detail

Responding Officers

Seq Name

Unit

1 White Dock L

381

Main Radio Log Table:

Time/Date	Typ	Unit	Code	Zone	Agnc	Description
19:09:32 01/10/2014	1	381	CMPLT	D5E	LPD1	incid#=14-L443 Completed call
19:06:59 01/10/2014	1	381	NMINQ	D4D	LPD1	MDC: name=WEAT*, TOB*
19:06:43 01/10/2014	1	381	NMINQ	D4D	LPD1	MDC: name=WEATHERLY*, TOB
18:45:55 01/10/2014	1	381	ARRVD	D5E	LPD1	(MDC) Arrived on scene incid#
18:41:09 01/10/2014	1	381	17	D5E	LPD1	incid#=14-L443 Enroute call=79
17:50:19 01/10/2014	1	381	CMPLT	D5E	LPD1	incid#=14-L443 Reassigned to c
17:33:05 01/10/2014	1	381	ENRT	D5E	LPD1	(MDC) Enroute to a call incid#
17:31:57 01/10/2014	1	381	ASSGN	D5E	LPD1	incid#=14-L443 Assigned to a c

Narrative:

Lewiston Police Department

14-L443

Cpl. Dock White #381

January 10, 2014

Typed by: #364

On 01/10/14 at about 1616 hours, I was dispatched to 3635 12th Street. This was for the report of a theft that had occurred earlier. Upon my arrival, I met with Nate and Jenna Weatherly. Jenna explained to me that she received some Visa cash cards that were donated to her and Nate by the Jackson Baldwin Pay It Forward Foundation. Jenna told me that she spent a lot of time up in Spokane at the hospital with their child. Jenna told me that while she was at the hospital right around Christmastime, that her husband Nate was home alone. It was at this point that Nate interrupted Jenna and explained to me that while he was at home, he got into a verbal altercation with his brother, Toby Weatherly. Nate explained to me that there was a long history of Toby stealing things from him and this time he had found out that Toby had taken his cell phone and they had a verbal argument over it. Nate told me that after the argument was over, the two hugged and apologized to each other and that Toby then took a shower at Nate's house.

Nate explained to me that during this incident, Toby brought over two friends, a male and a female, and Nate did not know their names. Nate told me that the male and the female sat in his living room and he did not lose sight of them for most of the time that they were there. Nate told me that there was about a 10 to 15 minute period where he had left the inside of the house and then returned. On 12/24/13, Jenna and Nate realized that two of the Visa cards and one Chevron fuel card that were donated to them were all missing. Jenna explained to me that both of the Visa cards and the fuel card was in the top drawer of her dresser. Nate told me that they waited until they got the transactions from the cards back before they called the police.

It was at this point that Jenna handed me a piece of paper and she told me that the first Visa card had the account number [REDACTED]. Jenna told me that she found there were transactions on 12/21/13 at 0200 hours at an ATM at 3506 12th Street in Lewiston and the transaction was for \$300. She told me there was a transaction for \$124 at Safeway on 12/22/13 in The Dalles, Oregon. She showed me another transaction for \$9.99 in Portland, Oregon. There were several other transactions between Portland and Lewiston.

The second piece of paper that Jenna showed me had the other account number on it for a second Visa card, 4013 6650 0718 4077. Jenna told me that the transactions on this card were from \$303 on 12/21/13 at Rosauers in Lewiston at 0200 hours, \$83 on 12/22/13 at 1000 hours at 515 Mount Hood, The Dalles, Oregon, a \$12 purchase on 12/23/13 at Walgreens in The Dalles and several other establishments, including the Liberty Mart in Lewiston on 12/23/13.

Nate explained to me that while his brother was at his house, his brother told him he was going to Oregon for a day or two day trip and was going to be back. It was at this point that Nate put two and two together and realized that his brother had possibly stolen the credit cards from his wife's dresser drawer

while he left the house while Toby and Toby's friends were still in the house. Nate told me that his brother lived in a trailer court in Clarkston and that he did not have a phone number for him. Nate also could not give me an address for his brother.

Jenna then explained to me that she had a prescription bottle with approximately five oxycodone tablets in the dresser drawer with the Visa cards. Jenna told me that the prescription bottle was still in her drawer; however, the five oxycodone were gone. Nate explained to me that his brother did have a long history with abusing methamphetamine. Nate also said that his brother had spent a couple of years in prison and that he thought his brother was off of the drugs by now. Nate told me that it was obvious to him that his brother and/or his brother's friends took the cards from his house and used them to finance their trip to Oregon and then back to Lewiston.

I attempted to make contact with Toby Weatherly in order to establish an interview with him; however, my efforts were met with negative results. I ask that this case be turned over to detectives for further follow up and possible photographs from the ATM machines where the Visa cards were used.

End of Report.

Cpl. Dock White #381

Law Supplemental Narrative:

Seq Name	Date	Supplemental Narratives Narrative
2 Sparks Tom	11:41:17 03/04/2014	
T.Sparks, 03-04-14		Lewiston Police Supplemental Narrative

14-L443
March 4, 2014
Det. Tom Sparks, 375
Typed by: 314

I have recently been in contact with the complainant in this case, Jenna Weatherly, in regards to possibly identifying a suspect on video surveillance. Weatherly came to the station and I escorted her into an interview room. I showed Weatherly the video surveillance that I obtained from Zions Bank where she was able to positively identify Toby Weatherly using the stolen cards that he obtained from their residence. Weatherly observed the video and instantly stated yes that is Toby. The video surveillance will be placed into evidence for future reference. I will be recommending grand theft charges as well as possession of a stolen financial transaction card be filed against Toby.

Case continuing pending action with the prosecutor's office.

End of report.

FILED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

Defendant.

CASE NO.

CR14-04001

CLERK OF THE DIST. COURT

DEPUTY

MAGISTRATE'S FINDING OF
PROBABLE CAUSE FOR
WARRANT OF ARREST

The undersigned Magistrate having examined under oath Deputy Prosecutor JUSTIN J. COLEMAN, who seeks a warrant of arrest for the above-referenced defendant, and after having examined said officer's Affidavit and the documents attached thereto, and probable cause having been shown, the undersigned Magistrate hereby finds that probable cause exists to believe that an offense has been committed and that the defendant has committed it, and authorizes the issuance of a warrant of arrest against the above-referenced defendant for the crime(s) of: **COUNT I - GRAND THEFT, I.C. § 18-2403(3) and 18-2407(1)(b)(3), a felony; COUNT II - CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND FTC FORGERY DEVICES, I.C. § 18-3125(1), a felony.**

DATED this 4th day of June 2014.

MAGISTRATE

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 2923

FILED

2014 JUN 4 PM 2 55

PATTY O. WEEKS
CLERK OF THE DIST. COURT.

Reynolds
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,
D.O.B.: 03/19/1983,
S.S.N.: XXX-XX-3949,

Defendant.

CASE NO. **CR14-04601**

COMPLAINT - CRIMINAL

STATE OF I D A H O)
: ss.
County of Nez Perce)

PERSONALLY APPEARED Before me this 4th day of June 2014, in the County of Nez Perce, JUSTIN J. COLEMAN FOR APRIL A. SMITH, who, being first duly sworn, complains and says: that TOBY G. WEATHERLY, did commit the following crime(s):

COUNT I
GRAND THEFT, I.C. § 18-2403(3) and 18-2407(1)(b)(3), a felony

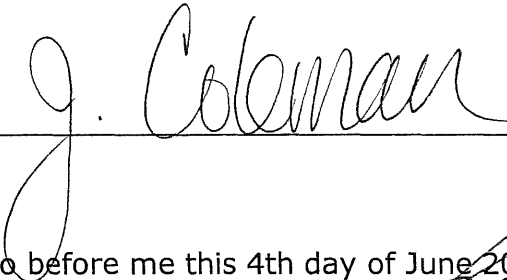
That the defendant, TOBY G. WEATHERLY, on or about the 21st day of December 2013, in the County of Nez Perce, State of Idaho, did knowingly exercise unauthorized control over and/or make an unauthorized transfer of interest in the property of another person with the intent of depriving the owner thereof, to wit: by using a financial transaction card belonging to NATE and/or JENNA WEATHERLY.

COUNT II
CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND FTC FORGERY DEVICES, I.C. § 18-3125(1), a felony

That the defendant, TOBY G. WEATHERLY, on, about or between 21st day of December 2013 and 23rd day of December 2013, in the County of Nez Perce, State of Idaho, did acquire and/or possess a financial transaction card, to-wit: a Visa Cash Card, without the consent of the cardholder and/or issuer, with the intent to use the financial transaction card to defraud the cardholder and/or issuer.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.

Said Complainant therefore prays that TOBY G. WEATHERLY be dealt with according to law.



SUBSCRIBED and SWORN to before me this 4th day of June 2014.



MAGISTRATE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

Defendant.

CASE NO. **CR14-04601**

WARRANT OF ARREST

THE STATE OF IDAHO: To any Sheriff, Constable, Marshal or Policeman of the
State of Idaho, or the County of Nez Perce, GREETINGS:

A complaint on oath having this day been laid before me by JUSTIN J.
COLEMAN, charging that the crime(s) of: **COUNT I - GRAND THEFT, I.C. § 18-
2403(3) and 18-2407(1)(b)(3), a felony; COUNT II - CRIMINAL
POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL
TRANSACTION NUMBER AND FTC FORGERY DEVICES, I.C. § 18-3125(1), a
felony;** has been committed, and accusing the above-named defendant thereof.

YOU ARE THEREFORE COMMANDED, forthwith to arrest the above-named
defendant in the daytime and bring said defendant before me at my office at
Lewiston, in said County, or in case of my absence or inability to act, before the
nearest or most accessible Judge in this County.

HEREIN FAIL NOT, and due return make hereof.

BOND is hereby set at \$ 10,000.00.

WITNESS my hand at Lewiston, Idaho, on this the 4th day of June 2014.

GREG KALBFLEISCH

JUDGE

ENDORSEMENT TO ARREST IN NIGHTTIME

YOU ARE FURTHER COMMANDED to arrest TOBY G. WEATHERLY in the day time or night time and bring said defendant before me at my office at Lewiston, in said County, or in case of my absence or inability to act, before the nearest and most accessible Judge in this County.

WITNESS my hand at Lewiston, Idaho, on this the 4th day of June 2014.

GREG KALBFLEISCH

JUDGE

Jun 4, 2014 5:13:18 PM

Printed By: 4611ERIN06 from: SNP3

Received Time: 18:11:05 06-04-14 Source ORI: IDIHOT000
Summary: EW: WEATHERLY, TOBY GLENN CRCR20140004601
View Message Details
THE FOLLOWING RECORD BEING TRANSFERRED FROM COURTS TO ID0350000
ILED REPLY
ID0350000

***** HOLD WARRANT *****

NAM/WEATHERLY, TOBY GLENN RAC/WHITE SEX/M HAI/BLN EYE/GRN
HGT/509 WGT/190 [REDACTED]
DOW/20140604

[REDACTED] OLN/KA132617I OLS/ID OLTY/OPERATOR LICENSE
MAILING ADDRESS/1325 LIBBY

CITY/CLARKSTON STATE/WA ZIP/99403

MIS/201307 I18-2403 {F} THEFT-GRAND 201307 I18-3125 {F} FRAUD-POSSESSION
OF FINANCIAL TRANSACTION CARD, NUMBER AND/OR FTC FORGERY DEVICES

TNO/2088163849

CTYP/FE

LTYP/D LSEQ/001 ISEQ/001

AORI/ID0350000 SERV/ANY

BOND/10000 STAT/OUTSTANDING STAD/20140604

WNO/CRCR20140004601 DTE/20140604 DLU/20140604

***** END OF RECORD *****

***** Enter Wanted Person *****

***** Modify Wanted Person *****

MRI 9989514 IN: HFS 13245 AT 2014-06-04 18:11:05

OUT: SNP3 348 AT 2014-06-04 18:11:05

FILED
2014 JUN 5 AM 7 12
PATTY O. WELLS
CLERK OF THE DIST. COURT
DEPUTY

Served
Toby Glenn
6/4/14 D70

RECEIVED
HOUR 1713 A.M. (P.M.)

JUN 03 2014

NEZ PERCE COUNTY SHERIFF'S OFFICE
LEWISTON, IDAHO 83501

BY: [Signature]

WARRANT INFORMATION SHEET

ATTENTION: Nez Perce County Jail-Dispatch

STATE OF IDAHO vs. TOBY G. WEATHERLY

COURT CASE NO. _____ **CR14-04601**

ORIGINAL CRIMINAL CHARGE(s): COUNT I - GRAND THEFT, I.C. § 18-2403(3) and 18-2407(1)(b)(3), a felony; COUNT II - CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND FTC FORGERY DEVICES, I.C. § 18-3125(1), a felony

EXTRADITION INSTRUCTIONS:

_____ WEST COAST (WA, OR, ID, CA, NV)
☒ **NORTHWEST (OR, WA, ID, MT)**
_____ WESTERN UNITED STATES (ID, WA, OR, MT, NV, CA, UT, WY, CO, NM, AZ)
_____ IDAHO ONLY
_____ EASTERN WASHINGTON/IDAHO OTHER _____

NEED TO ENTER IN: ☒ **NCIC** ☐ **IN STATE**

_____ SEX: Male
HEIGHT: 5' 6" WEIGHT: 145 HAIR: Blonde
EYES: Green RACE: White S.S.N.: _____

OTHER IDENTIFICATION INFORMATION:

LAST KNOWN ADDRESS AND/OR PLACE OF EMPLOYMENT:

**3525 Libby Street
Clarkston, WA 99403**

DATED this 4th day of June 2014.

J. Coleman for

APRIL A. SMITH
Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

Defendant.

CASE NO. **CR14-04601**

WARRANT OF ARREST

THE STATE OF IDAHO: To any Sheriff, Constable, Marshal or Policeman of the
State of Idaho, or the County of Nez Perce, GREETINGS:

A complaint on oath having this day been laid before me by JUSTIN J.
COLEMAN, charging that the crime(s) of: **COUNT I - GRAND THEFT, I.C. § 18-
2403(3) and 18-2407(1)(b)(3), a felony; COUNT II - CRIMINAL
POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL
TRANSACTION NUMBER AND FTC FORGERY DEVICES, I.C. § 18-3125(1), a
felony;** has been committed, and accusing the above-named defendant thereof.

YOU ARE THEREFORE COMMANDED, forthwith to arrest the above-named
defendant in the daytime and bring said defendant before me at my office at
Lewiston, in said County, or in case of my absence or inability to act, before the
nearest or most accessible Judge in this County.

HEREIN FAIL NOT, and due return make hereof.

BOND is hereby set at \$ 10,000.

WITNESS my hand at Lewiston, Idaho, on this the 4th day of June 2014.

JUDGE

ENDORSEMENT TO ARREST IN NIGHTTIME

YOU ARE FURTHER COMMANDED to arrest TOBY G. WEATHERLY in the day time or night time and bring said defendant before me at my office at Lewiston, in said County, or in case of my absence or inability to act, before the nearest and most accessible Judge in this County.

WITNESS my hand at Lewiston, Idaho, on this the 4th day of June 2014.

JUDGE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CASE TITLE State v. Toby Weatherly JUDGE GREG KALBFLEISCH
HEARING TYPE Initial Arraignment CLERK MEENA COLE
PLF ATTORNEY _____ TAPE # Arm 2
DEF ATTORNEY _____ CASE # CR14-4601
OTHERS PRESENT _____ DATE 6/5/14
85029 TIME 1:15 PM

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

Def present with /without counsel

✓ Court advises Def of rights and charges

✓ Court sets Preliminary Hearing for 6/18/14 at 1:30 PM

✓ Def requests court appointed counsel and signs Affidavit

✓ Court Appoints Kurt Law to represent Def

Bond: \$5,000

Recess 85354

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE
MAGISTRATE DIVISION

THE STATE OF IDAHO,

Plaintiff,

vs.

Toby Weatherly

Defendant,)

NO. CR14-4601

NOTIFICATION OF RIGHTS
FELONY

FILED

2014 JUN 5 AM 10 04

PATTY O. WEEKS
CLERK OF THE DIST. COURT

Opemolds
DEPUTY

The purpose of the initial appearance is to advise you of your rights and the charge(s) against you.

- You have the right to be represented by an attorney at all times.
- If you want an attorney, but cannot pay for one, the court will appoint one to help you. If you are found guilty or plead guilty, you may be ordered to reimburse Nez Perce County for the cost of your defense.
- You have the right to remain silent. Any statement you make could be used against you.
- You have the right to bail.
- You have the right to a preliminary hearing before a judge.
- The purpose of a preliminary hearing is to determine whether probable cause exists to believe you have committed the crime(s) charged. A preliminary hearing is not a trial to decide guilt or innocence.
- You can cross-examine all witnesses who testify against you.
- You can present evidence, testify yourself if you wish, and have witnesses ordered to testify by subpoena.
- If the court finds probable cause exists that you committed the crime(s) charged, or if you waive your preliminary hearing, you will be sent to the District Court for arraignment.

If you have questions about the charge(s), about your rights or the court process, don't hesitate to speak up. It is important that you understand.

Acknowledgement of Rights

I have read this entire document, and I understand these rights as set forth above.

Date 6-14

Defendant's Signature

Toby Weatherly

Notification of Rights - Felony

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

2014 JUN 5 AM 10 04

Plaintiff,

vs.

Toby Glenn Weatherly,

Defendant.

PATTY O. WEEKS
CLERK OF THE DIST. COURT Case No: CR-2014-0004601

DEPUTY)

COMMITMENT, HELD TO ANSWER

THE STATE OF IDAHO TO THE SHERIFF OF NEZ PERCE COUNTY, GREETINGS:

An Order having been made this day by me that Toby Glenn Weatherly be held to answer upon the charge of Theft-Grand Fraud-Possession of Financial Transaction Card, Number and/or FTC Forgery Devices committed in said Nez Perce County on or about 12/21/2013, 12/21/2013, .

Now, YOU, the said sheriff, are commanded to receive the said Defendant into your custody and detain Toby Glenn Weatherly until legally discharged, and hereby order that the said Defendant be admitted to bail in the sum of \$ 5,000.

Dated this 5th day of June, 2014.

MAGISTRATE

FILED

2014 JUN 5 AM 10 04

PATTY O. WEEKS
CLERK OF THE DIST. COURT
Deputy
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

Toby Weatherly

Defendant.

)
) CASE NO. CR14-11001
)
) AFFIDAVIT OF FINANCIAL STATUS,
) APPLICATION FOR PUBLIC
) DEFENDER, AND ORDER
)
)
)

This application must be filled out completely before it can be reviewed for assignment of a public defender. All questions must be answered. NO EXCEPTIONS.

Toby Glenn Weatherly

Personal Information

Full Name: Toby Glenn Weatherly Date of Birth: 3-19-83
Address: 302 S. Liberty 1325 Libby Phone #: 208-503-9098
City: Clarkston State: Ida. Zip: 83401-9940

Income Information

Are you employed: No ☒ Yes ☐ Where? _____

What is your gross income (amount before taxes or any other withholdings are taken out)?

Monthly: \$ 0 Bi-weekly: \$ 0 Weekly: \$ 0

What is your hourly income? \$ 0 How many hours do you work per week? 0

Married? No ☒ Yes ☐ Spouse's Name: _____

What is your spouse's gross income (amount before taxes or any other withholdings are taken)?

Monthly: \$ 0 Bi-weekly: \$ 0 Weekly: \$ 0

Do you have any other sources of income? No ☒ Yes ☐

If yes, from whom? _____ How much per month? _____

Please list which, if any, of the following public assistance you receive:

____ Self Reliance Program Funds ____ SSI or SSDI ☒ Food Stamps
____ County or General Relief ____ Medicare/Medicaid ____ Cash Assistance
____ Other. Please specify: _____

Household Information

Please list each of the following dependents which reside in your household and for whom you are financially responsible:

_____ Spouse

_____ Children. How many total? _____ Please list age of each child: _____

_____ Other. Please specify relationship: _____

Debts

Please list the following debts you pay per month:

Mortgage/Rent: \$ 300.00 Food: _____ Utilities: \$ 40.00

Car: _____ Medical: _____ Credit Cards: _____

Loans: _____ Child Support: _____ Other: _____

Assets

Do you own your home? No ☒ Yes _____ Equity: _____

Do you rent your home? No _____ Yes ☒

Do you live with your parents? No ☒ Yes _____

Please list the approximate value of the following property you own:

Motor Vehicles: How many? 1 Total Value of All Vehicles: \$ 500.00

Make and Model of Each Vehicle: 1973 Plymouth SCamp

Furniture/Appliances/Electronics: \$ 0

Sporting Equipment: \$ 0 Guns: How many? 2 Value: \$ 0

Boats/Recreational Vehicles/Motorcycles/Snowmobiles: \$ 0

Money in savings/checking accounts: \$ 0 Name of Bank: 0

Cash on hand: \$ 0 Stocks/Bonds: \$ 0

Jewelry: \$ 0

Other. Specify: 0 \$ _____

What is the last year you filed an income tax return? 7 Amount of return: \$ 70

Can you borrow money to pay an attorney? No ☒ Yes _____ If yes, how much? \$ 0

I HEREBY ACKNOWLEDGE THAT I MAY BE REQUIRED TO REIMBURSE NEZ PERCE COUNTY FOR THE SERVICES OF THE PUBLIC DEFENDER.

I HEREBY CERTIFY THAT ALL OF THE ANSWERS TO THE FOREGOING QUESTIONS ARE UNDER OATH AND SWEAR THAT THE SAME ARE TRUE AND CORRECT. IF I HAVE INTENTIONALLY ANSWERED ANY OF SAID QUESTIONS INCORRECTLY, I MAY BE PROSECUTED FOR PERJURY.

Dated this _____ day of June, 2014.

Toy Weather
Defendant's Signature

ORDER

Based upon the information contained in the Court record and on the above-filed affidavit, the Court hereby X GRANTS _____ DENIES the defendant's application for public defender. kwote is hereby appointed as counsel to represent the defendant in the above-entitled case.

Dated this 5th day of June, 20 14.

Magistrate Judge

FILED

2014 JUN 5 AM 10 04
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CLERK OF THE DIST. COURT.

DEPUTY

STATE OF IDAHO,

Plaintiff,

vs.

Toby Weatherly
Defendant,

CASE NO. CR14-4601

() NOTICE OF PRELIMINARY
CONFERENCE

(X) NOTICE OF PRELIMINARY
HEARING

() NOTICE OF SENTENCING
NOTICE OF HEARING ON

NOTICE IS HEREBY GIVEN TO the above-named Defendant that the following hearing has been set in your case at which you are to appear in the Courtroom of the Nez Perce County Courthouse, as indicated below:

() PRELIMINARY CONFERENCE to begin at _____, __.m., on the
_____ day of _____, 20____.

(X) PRELIMINARY HEARING to begin at 130, p.m., on the
18th day of June, 2014.

() SENTENCING to begin at _____, __.m. on the _____ day of
_____, 20____.

() HEARING to begin at _____, __.m. on the _____ day of
_____, 20____.

YOU ARE HEREBY NOTIFIED THAT IF YOU DO NOT APPEAR IN COURT AT SAID TIME AND PLACE, ANY BOND POSTED MAY BE FORFEITED BY THE COURT AND A WARRANT MAY BE ISSUED FOR YOUR ARREST WITHOUT FURTHER NOTICE.

DATED this 5th day of June, 2014.

BY ORDER OF:

(X) Copy to Prosecuting Attorney

(X) Copy handed to Defendant Scanned

() Copy mailed to Defendant to jail

(X) Copy mailed/handed/placed in
basket to Defendant's Attorney

Kwate Law

Maria Kalbfleisch
Judge

M. Cole
Clerk

FILED

2014 JUN 6 PM 4 13

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8753

PATTY O. WEEKS
CLERK OF DISTRICT COURT
[Signature]
DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	Case No. CR 2014-04601
)	
Plaintiff,)	
)	
vs.	)	REQUEST FOR DISCOVERY
)	
Toby G. Weatherly,)	
)	
Defendant.)	

TO: THE PROSECUTING ATTORNEY, NEZ PERCE COUNTY, STATE OF IDAHO:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests discovery and inspection of the following information, evidence, and materials:

ONE: Defendant hereby requests pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and I.C.R. 16(a) that the State disclose to the defense any and all exculpatory material and/or exculpatory information in this case. Defendant specifically objects to and rejects any requirement or request that defendant notify the State, in writing or otherwise, of the defenses that he or she is or may be asserting in this case as a condition of disclosure of such exculpatory information and/or exculpatory

material to the defense. Any such precondition for disclosure of exculpatory material and/or exculpatory material and/or exculpatory information violates the 4th, 5th, and 6th Amendments to the United States Constitution, the ruling in Brady v. Maryland, 373 U.S. 83 (1963), I.C.R. 16(a) and (c), attorney-client privilege and the work product doctrine. By this demand for disclosure the defendant demands production of all material and information which the State does not disclose and defendant demands notification of the State's determination to withhold material and information from defendant so that defendant can file a timely motion to compel the disclosure and production of the withheld material and/or information. Without waiving any objection to the State's request that defendant notify the State of defendant's planned defense(s) the State is further notified that a defense in this and every case in which this Request for Discovery is made includes, but is not limited to, the defense that material and/or information withheld by the State was and is exculpatory and if disclosed to defendant would have resulted in defendant's acquittal or dismissal of all charges.

TWO: Permission for the defendant to inspect and copy or photograph any relevant, written, or recorded statements made by the defendant or copies thereof within the possession, custody or control of the state.

THREE: The substance of any relevant, oral statement made by the defendant or copies thereof within the possession, custody or control of the state.

FOUR: Permission for the defendant to inspect and copy or photograph any written or recorded statements of a co-defendant and the substance of any relevant, oral statement made by a co-defendant, whether before or after arrest, in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney.

FIVE: Furnish to the defendant a copy of the prior criminal record of the defendant, if any.

SIX: Permission of the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, building or places, or copies or portions thereof, which are in the possession, custody, or control of the prosecuting attorney and which are material to the preparation of the defense or intended for use by the prosecutor as evidence at trial or obtained from or belonging to the defendant.

SEVEN: Permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case or copies thereof within the possession, custody, or control of the prosecuting attorney.

EIGHT: Furnish to the defendant a written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial, together with any record of prior felony convictions of any such person which is within the knowledge of the prosecuting attorney.

NINE: Furnish to the defendant a written list of the names and addresses of all who may be called by the state as expert witnesses at the trial. For all such expert witnesses, furnish to the defendant a written summary or report of any testimony the state intends to introduce, including a description of each witnesses's opinions, the facts and data for those opinions, and the witnesses's qualifications.

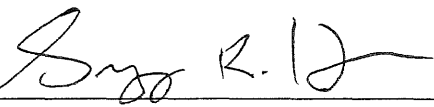
TEN: Furnish to the defendant statements made by the prosecution's witnesses or prosecuting attorney or agents or to any official involved in the investigatory process of the case.

ELEVEN: Furnish to the defendant reports and memoranda made by any police officer or investigator in connection with the investigation or prosecution of the case.

The undersigned further requests permission to inspect and copy said information, evidence, and materials not required to be furnished within fourteen (14) days from receipt of the notice, or at such other time as counsel may agree.

DATED this 6th day of June, 2014.

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

CERTIFICATE OF SERVICE

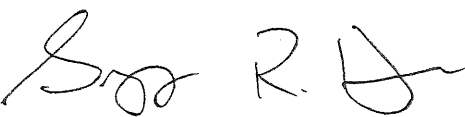
I hereby certify that on the 6th day of June, 2014, a true and correct copy of the foregoing instrument was:

☐ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

to the following:

Nez Perce County Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

FILED

2014 JUN 10 AM 11 43

PATTY G. WEEKS
CLERK OF THE DIST. COURT
Patty Weeks
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

Defendant.

CASE NO. CR2014-0004601

RESPONSE TO REQUEST FOR
DISCOVERY

TO THE ABOVE-NAMED DEFENDANT AND COUNSEL:

COMES NOW, the State in the above-entitled matter, and submits the following Response to Request for Discovery.

The State has complied with such request by providing the following:

1. Any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the State, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney, or the prosecuting attorney's agent have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

2. Any written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney, have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

3. Defendant's prior criminal record, if any, has been disclosed, made available, or is attached hereto as set forth in Exhibit "B."

4. Any books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions thereof, which are in the possession, custody, or control of the prosecuting attorney and which are material to the preparation of the defense or intended for use by the prosecutor as evidence at trial or obtained from or belonging to the defendant have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

5. Any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody, or control of the prosecuting attorney, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

6. A written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial is set forth in Exhibit "A." Any record of prior felony convictions of any such persons which is within the knowledge of the prosecuting attorney and all statements made by the prosecution witnesses or prospective prosecution

witnesses to the prosecuting attorney or the prosecuting attorney's agents or to any official involved in the investigatory process of the case have been disclosed, made available, or are attached hereto as set forth in Exhibit "A."

7. Any reports and memoranda in possession of the prosecuting attorney which were made by any police officer or investigator in connection with this investigation or prosecution of this case have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

8. All material or information within the prosecuting attorney's possession or control which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefore have been disclosed, made available, or are attached hereto as set forth in Exhibit "B." In addition, with regard to material or information which may be exculpatory as used or interpreted, the State requests that the defendant inform the State, in writing, of the defense which will be asserted in this case, so counsel for the State can determine if any additional material or information may be material to the defense, and thus fulfill its duty under I.C.R. 16(a) and Brady v. Maryland, 373 U.S. 83 (1963).

9. Wherever this Response indicates that certain evidence or materials have been disclosed, made available, or are attached hereto as set forth in Exhibit "B," such indication should not be construed as confirmation that such evidence or materials exist, but simply as an indication that if such evidence or materials exist, they have been disclosed or made available to the defendant. Furthermore, any items which are listed in Exhibit "B" but are not specifically provided, or which are referred to in documents which are listed in Exhibit "B," are available for inspection upon appointment with the Prosecuting Attorney's Office.

10. The State reserves the right to supplement any and all sections of this response if and when more information becomes available.

11. The State objects to requests by the defendant for anything not addressed above on the grounds that such requests are outside the scope AND/OR are irrelevant under I.C.R. 16.

DATED this 9th day of June 2014.



APRIL A. SMITH
Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing RESPONSE TO REQUEST FOR DISCOVERY was

- (1) _____ hand delivered, or
- (2) X hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Gregory R. Hurn
Kwate Law Office
1502 "G" Street
Lewiston, ID 83501

DATED this 9th day of June 2014.

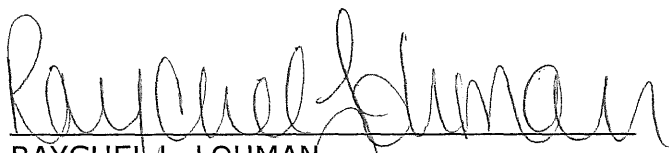

RAYCHEL L. LOHMAN
Legal Assistant

EXHIBIT "A"
LIST OF WITNESSES

STATE OF IDAHO vs. TOBY G. WEATHERLY
NEZ PERCE COUNTY CASE NO. CR2014-0004601

1. NAME: JENNA R. WEATHERLY
ADDRESS: 3635 12th Street
Lewiston, Idaho 83501
PHONE: (208) 791-1580

2. NAME: DOCK L. WHITE
ADDRESS: Lewiston Police Department
1224 "F" Street
Lewiston, Idaho 83501
PHONE: (208) 750-6355

3. NAME: TOM SPARKS
ADDRESS: Lewiston Police Department
1224 F Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

4. NAME: AMANDA WOMACK
ADDRESS: Lewiston Police Department
1224 F Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

EXHIBIT "B"
LIST OF REPORTS

STATE OF IDAHO vs. TOBY G. WEATHERLY
NEZ PERCE COUNTY CASE NO. CR2014-0004601

This case was refiled. The following was previously provided to you in Case Number CR2014-0002215 in the Response to Discovery and First Supplemental Response to Discovery:

1. Lewiston Police Department Cap Sheet, pages 1-2.
2. Law Incident Table, pages 3-4.
3. Narrative by White, pages 5-6.
4. Supplemental Narrative by Sparks, page 7.
5. Main Names Table, pages 8-11.
6. Criminal History, pages 12-29.
7. Evidence – Video (1).

Items contained on the attached CD are listed below.

CD consists of the following:
SURVEILLANCE VIDEO (VIDEO)

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

FILED

2014 JUN 10 AM 11 43

PATTY O. WEEKS
CLERK OF THE DIST. COURT
Patty O. Weeks
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

Defendant.

CASE NO. CR2014-0004601

REQUEST FOR DISCOVERY

TO THE ABOVE-NAMED DEFENDANT:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests discovery and inspection of the following information, evidence and materials:

1. Books, papers, documents, photographs, tangible objects or portions thereof, which are within the possession, custody, or control of the defendant, and which the defendant intends to introduce in evidence at trial;

2. All results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce in evidence at the trial, or which were prepared by a

witness whom the defendant intends to call at the trial, when the results or reports relate to testimony of the witness;

3. A list of names and addresses of witnesses the defendant intends to call at trial.

4. Please provide the State with a written summary or report of any expert witness testimony that the Defendant intends to introduce pursuant to Idaho Criminal Rules 702, 703 and 705 at trial or hearing in the above-captioned matter. Said summary must describe the expert's opinions, the facts and data for those opinions and the expert's qualifications. This request shall also include any expert opinions regarding mental health pursuant to Idaho Code Section 18-207.

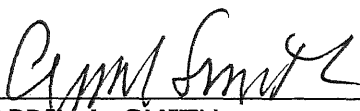
The undersigned further requests permission to inspect and copy said information, within 14 days from the date of this request at the Prosecuting Attorney's Office, Lewiston, Idaho.

REQUEST FOR NOTICE OF DEFENSE OF ALIBI

Pursuant to Idaho Code Section 19-519 and Idaho Criminal Rule 12.1, the Prosecuting Attorney requests that you serve upon his office within ten days of your receipts of this request a written notice of the intention of your client to offer a defense of alibi in the above-referenced matter.

Such notice must state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

DATED this 9th day of June 2014.



APRIL A. SMITH
Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

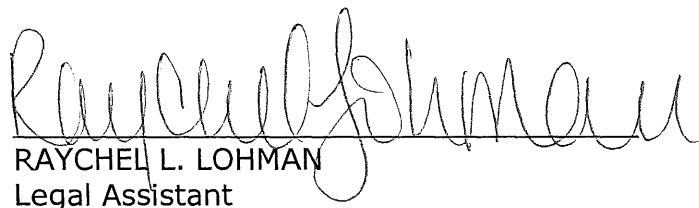
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing REQUEST FOR DISCOVERY was

- (1) _____ hand delivered, or
- (2) X hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Gregory R. Hurn
Kwate Law Office
1502 "G" Street
Lewiston, ID 83501

DATED this 9th day of June 2014.


RAYCHEL L. LOHMAN
Legal Assistant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

PRELIMINARY HEARING MINUTES

CR-2014-0004601

State of Idaho vs. Toby Glenn Weatherly

Hearing type: Preliminary Hearing

Hearing date: 6/18/2014

Time: 1:56 pm

Judge: Greg K. Kalbfleisch

Courtroom: 3

Minutes Clerk: Cole

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: Nicholas Lepire

015807

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

Def present ☒ with / ☐ without counsel

Nick Lepire --- present for State

☐ State / ☐ Def requests continuance of **Preliminary Hearing**

☐ Case set for District Court Arraignment at Assigned to:

Preliminary Hearing held. Proceedings as follows:

015844 State and defense stipulate to entry of video marked as State's Exhibit 1.

Court – admit State's Exhibit 1

015919 State calls Jenna Weatherly; sworn in by clerk. Resides in Lewiston, ID.
Defendant is her brother in law

020132 witness identify defendant in the courtroom

12/21/13 – in and out of the house when she was in Spokane taking care of
premature baby. Son was 11/7. December 20 – came back.

020350 off the record

020910 back on the record. Mentioned these Visa's card.

Judge Kalbfleisch is on the Board of director on Jackson Baldwin Foundation. Did not meet Ms. Weatherly. However wanted to inform parties of this information.

021025 Mr. Hurn – okay to proceed

021051 Mr. Lepire – continues direct examination

021134 State approaches witness

021340 2 gift cards used. Noticed they were missing on 12/24/13.

021534 found out the cards were used at ATM. Dalles. Portland. Between the two cards there were 10-15 transactions.

021627 Ms. Weatherly - never used those cards to make any transaction.

Recognized defendant in video surveillance.

021803 State – plays video.

022139 Mr. Hurn – cross examination.

Had four cards total. Set up a pin number to use.

Given for witness and husband to use.

Never observed defendant go into witness's room.

Bank statement from P1FCU. They loaded the card with the money.

Nicholas Gene Weatherly = husband's name.

023047 State – redirect.
11/21/13. Looked at security system. Defendant was at the house a couple of times.

023304 Mr. Hurn – recross

023726 witness steps down

State – no more evidence.

023733 off the record.

023814 Mr. Hurn – nothing else

023821 State – presents argument.

024048 Mr. Hurn presents argument. complaint lists an owner of the card as Nate Weatherly.
Complaint states and/or, however there is no Nate that possessed the card.
Facially inaccurate.

Insufficient evidence defendant took the card. Theft of the card itself, there was a 48 day period where Ms. Weatherly was not at her house.

024255 Court – re: Ms. Weatherly’s testimony. Given a gift baskets with preloaded visa cards in it. To activate, have to call a number. She placed two of the cards in a drawer next to her bed. She was the only one who knew they were there. Those cards were missing.

024407 State’s Exhibit 1 – defendant is on the video. 12/21/13 at bank.

024427 Court understands Mr. Hurn’s argument. State will take it out of the complaint. Jenna did testify they were her cards. Court – bind defendant over on Court I and II.

024527 bind defendant over to Judge Gaskill. 6/19/14 at 1:15pm

024616 recess

Date: 06/25/2014

Second Judicial District Court - Nez Perce County

User: MEENA

Time: 11:27 AM

Exhibit Summary

Page 1 of 1

Case: CR-2014-0004601

State of Idaho vs. Toby Glenn Weatherly

Sorted by Exhibit Number

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
1	State's Exhibit 1 - Surveillance Video - Admitted 6/18/14	Admitted			
		Assigned to:	[none] Nicholas Lepire		

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

FILED
2014 JUN 19 AM 11 59
PATTY O. WEEKS
CLERK OF THE DIST. COURT

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

Defendant.

CASE NO. CR2014-0004601

**FIRST SUPPLEMENTAL RESPONSE
TO REQUEST FOR DISCOVERY**

COMES NOW, APRIL A. SMITH, Deputy Prosecuting Attorney, for Nez Perce County, Idaho, and pursuant to Defendant's Request for Discovery in the case herein, makes the following supplemental disclosure compliance pursuant to Idaho Criminal Rules, Rule 16.

1. That attached hereto is AMENDED EXHIBIT "A" which sets forth additional persons who may be called by the State as witnesses at a trial, none of whom are known by the undersigned to have any prior felony convictions, unless otherwise indicated. The State will continue to provide names of any witnesses as they become available.

DATED this 18th day of June 2014.



APRIL A. SMITH
Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

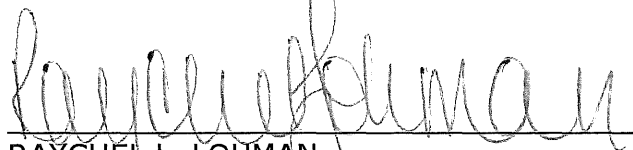
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY was

- (1) _____ hand delivered, or
- (2) x hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Gregory R. Hurn
Kwate Law Office
1502 "G" Street
Lewiston, ID 83501

DATED this 18th day of June 2014.



RAYCHEL L. LOHMAN
Legal Assistant

AMENDED EXHIBIT "A"
AMENDED LIST OF WITNESSES

STATE OF IDAHO vs. TOBY G. WEATHERLY
NEZ PERCE COUNTY CASE NO. CR2014-0004601

1. NAME: JENNA R. WEATHERLY
 ADDRESS: 3635 12th Street
 Lewiston, Idaho 83501
 PHONE: (208) 791-1580

2. NAME: DOCK L. WHITE
 ADDRESS: Lewiston Police Department
 1224 "F" Street
 Lewiston, Idaho 83501
 PHONE: (208) 750-6355

3. NAME: TOM SPARKS
 ADDRESS: Lewiston Police Department
 1224 F Street
 Lewiston, Idaho 83501
 PHONE: (208) 746-0171

4. NAME: AMANDA WOMACK
 ADDRESS: Lewiston Police Department
 1224 F Street
 Lewiston, Idaho 83501
 PHONE: (208) 746-0171

5. **NAME: NICHOLAS G. WEATHERLY**
 ADDRESS: 3635 12th Street
 Lewiston, Idaho 83501
 PHONE: (208) 816-1822

EXHIBIT "B"
LIST OF REPORTS

STATE OF IDAHO vs. TOBY G. WEATHERLY
NEZ PERCE COUNTY CASE NO. CR2014-0004601

This case was refiled. The following was previously provided to you in Case Number CR2014-0002215 in the Response to Discovery and First Supplemental Response to Discovery:

1. Lewiston Police Department Cap Sheet, pages 1-2.
2. Law Incident Table, pages 3-4.
3. Narrative by White, pages 5-6.
4. Supplemental Narrative by Sparks, page 7.
5. Main Names Table, pages 8-11.
6. Criminal History, pages 12-29.
7. Evidence – Video (1).

Items contained on the attached CD are listed below.

CD consists of the following:
SURVEILLANCE VIDEO (VIDEO)

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

FILED
ORIGINAL

2014 JUN 19 PM 12 00

PATTY O. WEEKS
CLERK OF THE DIST. COURT.

DEPUTY

James

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,
D.O.B.: 03/19/1983,
S.S.N.: XXX-XX-3949,

Defendant.

CASE NO. CR2014-0004601

INFORMATION

APRIL A. SMITH, Deputy Prosecuting Attorney, in and for the County of Nez Perce, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into the District Court of the County of Nez Perce, and states that TOBY G. WEATHERLY is accused by this Information of the following crime(s):

COUNT I

GRAND THEFT, I.C. § 18-2403(3) and 18-2407(1)(b)(3), a felony

That the defendant, TOBY G. WEATHERLY, on or about the 21st day of December 2013, in the County of Nez Perce, State of Idaho, did knowingly exercise unauthorized control over and/or make an unauthorized transfer of interest in the property of another person with the intent of depriving the owner thereof, to wit: by using a financial transaction card belonging to NATE and/or JENNA WEATHERLY.

COUNT II
CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL
TRANSACTION NUMBER AND FTC FORGERY DEVICES, I.C. § 18-3125(1), a
felony

That the defendant, TOBY G. WEATHERLY, on, about or between 21st day of December 2013 and 23rd day of December 2013, in the County of Nez Perce, State of Idaho, did acquire and/or possess a financial transaction card, to-wit: a Visa Cash Card, without the consent of the cardholder and/or issuer, with the intent to use the financial transaction card to defraud the cardholder and/or issuer.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.



APRIL A. SMITH

Deputy Prosecuting Attorney

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

FILED
ORIGINAL
JUN 19 11 12 00
PATTY G. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,
D.O.B.: 03/19/1983,
S.S.N.: XXX-XX-3949,

Defendant.

CASE NO. CR2014-0004601

AMENDED INFORMATION

APRIL A. SMITH, Deputy Prosecuting Attorney, in and for the County of Nez Perce, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into the District Court of the County of Nez Perce, and states that TOBY G. WEATHERLY is accused by this **Amended** Information of the following crime(s):

COUNT I

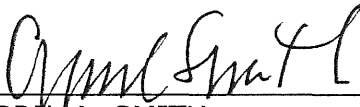
GRAND THEFT, I.C. § 18-2403(3) and 18-2407(1)(b)(3), a felony

That the defendant, TOBY G. WEATHERLY, on or about the 21st day of December 2013, in the County of Nez Perce, State of Idaho, did knowingly exercise unauthorized control over and/or make an unauthorized transfer of interest in the property of another person with the intent of depriving the owner thereof, to wit: by using a financial transaction card belonging to **NICHOLAS** and/or JENNA WEATHERLY.

COUNT II
CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL
TRANSACTION NUMBER AND FTC FORGERY DEVICES, I.C. § 18-3125(1), a
felony

That the defendant, TOBY G. WEATHERLY, on, about or between 21st day of December 2013 and 23rd day of December 2013, in the County of Nez Perce, State of Idaho, did acquire and/or possess a financial transaction card, to-wit: a Visa Cash Card, without the consent of the cardholder and/or issuer, with the intent to use the financial transaction card to defraud the cardholder and/or issuer.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.



APRIL A. SMITH
Deputy Prosecuting Attorney

FILED

2014 JUN 19 PM 4 03

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

DEPUTY

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8753

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	CASE NO. CR 2014-04601
)	
Plaintiff,)	
)	
vs.	)	APPLICATION FOR TRANSCRIPT
	)	OF PRELIMINARY HEARING
Toby G. Weatherly,)	
)	
Defendant.)	
)	

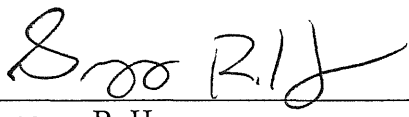
COMES NOW, Gregory R. Hurn of Kwate Law Offices, PLLC, attorney for the above-named defendant, Toby G. Weatherly, and respectfully shows the Court as follows:

1. That petitioner was appointed on the 5th day of June, 2014, as attorney for the above-named defendant.
2. That a transcript of the preliminary hearing is necessary for trial preparation.
3. That said defendant is indigent and without funds or other resources to pay for the said transcript.

WHEREFORE, petitioner prays that an order be made for the preparation of the said transcript of the preliminary hearing held on June 18, 2014.

DATED this 19th day of June, 2014.

KWATE LAW OFFICES, PLLC
Attorneys for Defendant

By 
Gregory R. Hurn

CERTIFICATE OF SERVICE

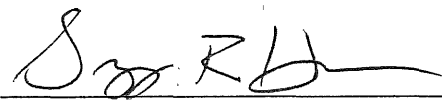
I hereby certify that on the 19th day of June, 2014, a true and correct copy of the foregoing instrument was:

☐ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

to the following:

Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

FILED

2014 JUN 24 PM 3 43

PATTY S. WEEKS

CLERK OF THE DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	CASE NO. CR 2014-04601
)	
Plaintiff,)	
	)	ORDER TO PREPARE
vs.	)	TRANSCRIPT OF
	)	PRELIMINARY HEARING
Toby G. Weatherly,)	
)	
Defendant.)	

The Court having read and passed on the Application for Transcript of Preliminary Hearing
and being fully advised in the premises hereof,

IT IS HEREBY ORDERED THAT a transcript be prepared of said preliminary hearing.

DATED this 24th day of June, 2014.

Judge

ORDER TO PREPARE
TRANSCRIPT OF
PRELIMINARY HEARING

1

TRANSCRIPT ASSIGNED TO
☒ CARLTON
☐ TOWLER

DATE

6/24/14

60
ORIGINAL

CERTIFICATE OF SERVICE

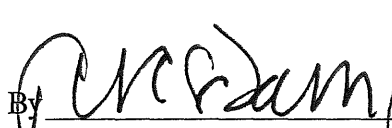
I HEREBY CERTIFY that on this 24th day of June, 2014, I caused a true and correct copy of the foregoing to be delivered to the following:

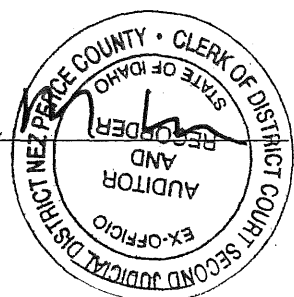
Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
(Court basket)

Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501
(Court basket)

Court Reporter
Nez Perce County Court
Post Office Box 896
Lewiston, Idaho 83501
(Court basket)

Patty O. Weeks,
Clerk of the District Court

By 
Deputy Clerk



ORDER TO PREPARE
TRANSCRIPT OF
PRELIMINARY HEARING

Second Judicial District Court, State of Idaho
In and For the County of Nez Perce
1230 Main St.
Lewiston, Idaho 83501

STATE OF IDAHO,

Plaintiff,

vs.

Toby Glenn Weatherly,

Defendant.

FILED)

2014 JUN 25 AM 11:23

Case No: CR-2014-0004601

PATTY O. WEEKS)
CLERK OF THE DIST. COURT

NOTICE OF HEARING

M. Cole
DEPUTY

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Arraignment
Judge:

Thursday, June 26, 2014 01:15 PM
Jay P. Gaskill DJ

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Wednesday, June 25, 2014.

Defendant: Toby Glenn Weatherly
1325 Libby
Clarkston, WA 99403

Mailed _____ Hand Delivered ☒ scanned to jail

Private Counsel: Kwate Law Office PD 2014
1502 G St.
Lewiston, ID 83501

Mailed _____ Hand Delivered ☒

Prosecutor: Justin J Coleman

Mailed _____ Hand Delivered ☒

Dated: Wednesday, June 25, 2014
Patty O. Weeks
Clerk Of The District Court

By:

M. Cole
Deputy Clerk
DOC22 7/96

FILED
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

v.

TOBY G. WEATHERLY,

Defendant.

PATTY O. WEEKS
 CLERK OF THE DIST. COURT
MOBle
 DEPUTY

) CASE NO. CR14-4601

) ORDER BINDING OVER

The undersigned Magistrate having **HEARD** the Preliminary hearing in the above-entitled matter on the 18th day of June, 2014, and it appearing to me that the offense set forth in the Complaint theretofore filed herein has been committed, and there is sufficient cause to believe the above-named defendant guilty thereof.

I ORDER that said defendant be held to answer the same, and said defendant is hereby bound over to the District Court for trial on the charge of: COUNT I: GRAND THEFT, I.C. § 18-2403(3) and 18-2407(1)(b)(3), a felony; COUNT II: CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND FTC FORGERY DEVICES, I.C. § 18-3125(1), a felony.

DATED this 25th day of June, 2014.

GREG KALBFLEISCH

 Magistrate

This case has been assigned to: Jay P. Gaskill, District Judge

ORDER BINDING OVER

COURT MINUTES

CR-2014-0004601

State of Idaho vs. Toby Glenn Weatherly

Hearing type: Arraignment

Hearing date: 6/26/2014

Time: 1:16 pm

Judge: Jay P. Gaskill DJ

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: April Smith

11617 Defendant present, in custody, with counsel.

State's Information previously filed for the crime of Grand Theft and Criminal Possession of a Financial Transaction Card.

11707 Defendant understands the charge.

11715 Defendant waives the reading of the Information.

11736 Defendant understands the penalties.

11825 Defendant's name, date of birth and social security number are correct.

11837 Mr. Hurn requests this matter be set for trial.

11850 Defendant enters not guilty plea. Jury trial set for 10-6-14 at 9 a.m., pretrial motions along with supporting briefs due 7-24-14, responding briefs due 8-14-14, pretrial motions will be heard 9-4-14 at 3:30 p.m. if no motions are filed there will not be a hearing and final pretrial conference set for 9-18-14 at 3:30 p.m.

12048 Court recess.

A handwritten signature in black ink, appearing to be 'JPG' or similar, located in the lower right quadrant of the page.

FILED

2014 JUN 27 PM 4 40

PATTY O. WEEKS
CLERK OF THE DIST. COURT
[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

CASE NO. CR14-04601

ORDER SETTING JURY TRIAL
AND SCHEDULING PROCEEDINGS

The above-entitled case is hereby scheduled as follows:

JURY Trial shall commence on October 6, 2014 at the hour of 9:00 a.m.;

All pre-trial motions shall be filed on or before; July 24, 2014;

Supporting Briefs due: July 24, 2014;

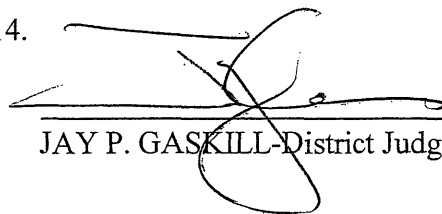
Responding Briefs due: August 14, 2014;

All pre-trial motions shall be heard at the hour of 3:30 p.m. on Thursday, September 4, 2014, with the defendant personally present at said hearing. If no motions are filed, there will be no hearing on this date.

ORDER SETTING JURY TRIAL AND
SCHEDULING PROCEEDINGS

Final pre-trial conference and the date and time by which plea bargaining must be completed
September 18, 2014 at 3:30 p.m.

Dated this 27th day of June, 2014.



JAY P. GASKILL-District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER SETTING JURY TRIAL AND SCHEDULING PROCEEDINGS was:

✓ hand delivered via court basket, or

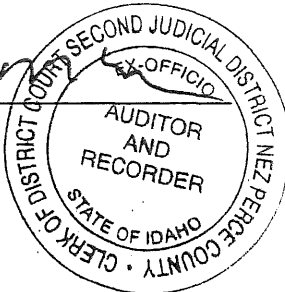
 mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 2nd day of July, 2014.
to:

Greg Hurn
1502 G Street
Lewiston ID 83501

April Smith
P.O. Box 1267
Lewiston, ID 83501

PATTY O. WEEKS, Clerk

By *P. O. Weeks*
Deputy



ORDER SETTING JURY TRIAL AND
SCHEDULING PROCEEDINGS

FILED

2014 JUL 10 PM 4 13

PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8753

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	CASE NO. CR 2014-04601
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT'S RESPONSE TO
	)	REQUEST FOR DISCOVERY
Toby G. Weatherly,)	
)	
Defendant.)	

COMES NOW the defendant, Toby G. Weatherly, in the above-entitled matter, by and through defendant's attorney of record, Gregory R. Hurn of Kwate Law Offices, PLLC, responds to the plaintiff's request for discovery as follows:

1. Books, papers, documents, photographs, tangible objects or portions thereof, which are within the possession, custody or control of the defendant, and which the defendant intends to introduce into evidence at the trial.

RESPONSE: Defendant anticipates offering books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are obtained by defendant through his discovery efforts in the above captioned matter. If additional written documents, photographs, or objects relevant to this matter are discovered and defendant intends to introduce such into evidence at the time of trial, defendant will supplement the response to this request for discovery prior to trial.

2. All results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial, when the results or written reports relate to testimony of the witness.

RESPONSE: At present, defendant does not intend to introduce any results or reports of any such examinations or tests in evidence at trial. If results or reports of physical or mental examinations or scientific tests are obtained in connection with this case, or if defendant intends to introduce into evidence at trial any such additional documents which defendant may hereafter acquire, or any documents which may be prepared by witnesses whom defendant intends to call at trial, defendant will supplement the response to request for discovery prior to trial.

3. A list of names and addresses of witnesses whom the defendant intends to call at trial.

RESPONSE: In addition to the witnesses whose names and addresses were provided to the defense in the State's Response to Discovery, the defendant reserves the right to testify on defendant's own behalf at the jury trial. There are no additional witnesses at this time. If and when we do receive a list of additional witnesses, an amended discovery will be made.

4. Please provide the State with a written summary or report of any expert witness testimony that the Defendant intends to introduce pursuant to Idaho Criminal Rules 702, 703 and 705 at trial or hearing in the above-captioned matter. Said summary must describe the expert's opinions, the facts and data for those opinions and the expert's qualifications. This request shall also include any expert opinions regarding mental health pursuant to Idaho Code Section 18-207.

RESPONSE: At present, defendant does not intend to introduce any written summaries or reports of any expert witnesses at trial. If any written summaries or reports are obtained in connection with this case, or if defendant intends to introduce into evidence at trial any such summaries or reports, defendant will supplement the response to request for discovery prior to trial.

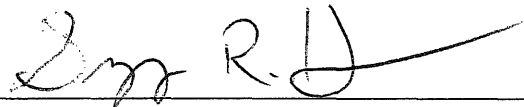
REQUEST FOR NOTICE OF DEFENSE OF ALBI Pursuant to Idaho Code Section 19-519 and Idaho Criminal Rule 12.1, the Prosecuting Attorney request that you serve upon his office within ten days of your receipt of this request a written notice of the intention of your client to offer a defense alibi in the above-referenced matter.

Such notice must state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

RESPONSE: Defendant does not offer a defense alibi at this time.

DATED this 10th day of July, 2014

KWATE LAW OFFICES, PLLC
Attorney for Defendant

By 

Gregory R. Hurn

CERTIFICATE OF DELIVERY

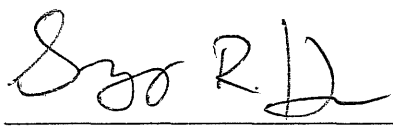
I hereby certify that on the 10th day of July, 2014, a true and correct copy of the foregoing instrument was:

☐ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

to the following:

April A. Smith
Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

FILED
2014 SEP 9 PM 4 13
PATTY O. WEEKS
CLERK OF DISTRICT COURT
[Signature]
DEPUTY.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

Defendant.

CASE NO. CR2014-0004601

**SECOND SUPPLEMENTAL RESPONSE
TO REQUEST FOR DISCOVERY**

COMES NOW, APRIL A. SMITH, Deputy Prosecuting Attorney, for Nez Perce County, Idaho, and pursuant to Defendant's Request for Discovery in the case herein, makes the following supplemental disclosure compliance pursuant to Idaho Criminal Rules, Rule 16.

1. That attached hereto is AMENDED EXHIBIT "A" which sets forth additional persons who may be called by the State as witnesses at a trial, none of whom are known by the undersigned to have any prior felony convictions, unless otherwise indicated. The State will continue to provide names of any witnesses as they become available.

DATED this 8th day of September 2014.

[Signature]

APRIL A. SMITH
Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

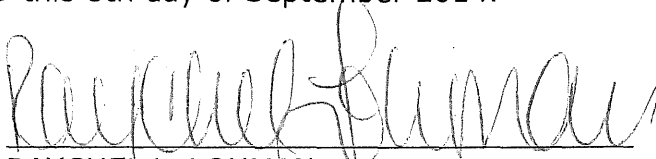
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing SECOND SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY was

- (1) _____ hand delivered, or
- (2) X hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Gregory R. Hurn
Kwate Law Office
1502 "G" Street
Lewiston, ID 83501

DATED this 8th day of September 2014:



RAYCHEL L. LOHMAN
Legal Assistant

AMENDED EXHIBIT "A"
AMENDED LIST OF WITNESSES

STATE OF IDAHO vs. TOBY G. WEATHERLY
NEZ PERCE COUNTY CASE NO. CR2014-0004601

1. NAME: JENNA R. WEATHERLY
 ADDRESS: 3635 12th Street
 Lewiston, Idaho 83501
 PHONE: (208) 791-1580

2. NAME: DOCK L. WHITE
 ADDRESS: Lewiston Police Department
 1224 "F" Street
 Lewiston, Idaho 83501
 PHONE: (208) 750-6355

3. NAME: TOM SPARKS
 ADDRESS: Lewiston Police Department
 1224 F Street
 Lewiston, Idaho 83501
 PHONE: (208) 746-0171

4. NAME: AMANDA WOMACK
 ADDRESS: Lewiston Police Department
 1224 F Street
 Lewiston, Idaho 83501
 PHONE: (208) 746-0171

5. NAME: NICHOLAS G. WEATHERLY
 ADDRESS: 3635 12th Street
 Lewiston, Idaho 83501
 PHONE: (208) 816-1822

6. **NAME: DOUGLAS PURDY**
 ADDRESS: Zions Bank
 3506 12th Street
 Lewiston, Idaho 83501
 PHONE: (208) 746-0151

EXHIBIT "B"
LIST OF REPORTS

STATE OF IDAHO vs. TOBY G. WEATHERLY
NEZ PERCE COUNTY CASE NO. CR2014-0004601

This case was refiled. The following was previously provided to you in Case Number CR2014-0002215 in the Response to Discovery and First Supplemental Response to Discovery:

1. Lewiston Police Department Cap Sheet, pages 1-2.
2. Law Incident Table, pages 3-4.
3. Narrative by White, pages 5-6.
4. Supplemental Narrative by Sparks, page 7.
5. Main Names Table, pages 8-11.
6. Criminal History, pages 12-29.
7. Evidence – Video (1).

Items contained on the attached CD are listed below.

CD consists of the following:
SURVEILLANCE VIDEO (VIDEO)

COURT MINUTES

CR-2014-0004601

State of Idaho vs. Toby Glenn Weatherly

Hearing type: Final Pretrial

Hearing date: 9/18/2014

Time: 3:31 pm

Judge: Jay P. Gaskill DJ

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: April Smith

33104 Defendant present, in custody, with counsel. Court sets another final pretrial for 9-30-14 at 2:00 p.m.

33121 Court recess.

A handwritten signature in black ink, appearing to be 'JG' or similar, located to the right of the 'Court recess.' entry.

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

FILED

2014 SEP 18 PM 4 16

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
Patty O. Weeks
DEPUTY.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

Defendant.

CASE NO. CR2014-0004601

THIRD SUPPLEMENTAL RESPONSE
TO REQUEST FOR DISCOVERY

COMES NOW, APRIL A. SMITH, Deputy Prosecuting Attorney, for Nez Perce County, Idaho, and pursuant to Defendant's Request for Discovery in the case herein, makes the following supplemental disclosure compliance pursuant to Idaho Criminal Rules, Rule 16.

1. That attached hereto is AMENDED EXHIBIT "B" which sets forth additional reports.

DATED this 18th day of September 2014.

April A. Smith
APRIL A. SMITH
Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

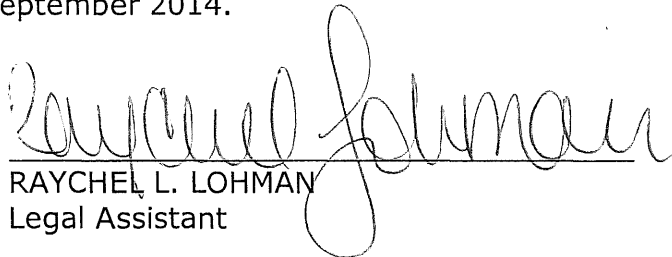
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing THIRD SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY was

- (1) _____ hand delivered, or
- (2) X hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Gregory R. Hurn
Kwate Law Office
1502 "G" Street
Lewiston, ID 83501

DATED this 18th day of September 2014.



RAYCHEL L. LOHMAN
Legal Assistant

EXHIBIT "A"
LIST OF WITNESSES

STATE OF IDAHO vs. TOBY G. WEATHERLY
NEZ PERCE COUNTY CASE NO. CR2014-0004601

1. NAME: JENNA R. WEATHERLY
ADDRESS: 3635 12th Street
Lewiston, Idaho 83501
PHONE: (208) 791-1580

2. NAME: DOCK L. WHITE
ADDRESS: Lewiston Police Department
1224 "F" Street
Lewiston, Idaho 83501
PHONE: (208) 750-6355

3. NAME: TOM SPARKS
ADDRESS: Lewiston Police Department
1224 F Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

4. NAME: AMANDA WOMACK
ADDRESS: Lewiston Police Department
1224 F Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

5. NAME: NICHOLAS G. WEATHERLY
ADDRESS: 3635 12th Street
Lewiston, Idaho 83501
PHONE: (208) 816-1822

6. NAME: DOUGLAS PURDY
ADDRESS: Zions Bank
3506 12th Street
Lewiston, Idaho 83501
PHONE: (208) 746-0151

AMENDED EXHIBIT "B"
AMENDED LIST OF REPORTS

STATE OF IDAHO vs. TOBY G. WEATHERLY
NEZ PERCE COUNTY CASE NO. CR2014-0004601

This case was refiled. Numbers 1-7 were previously provided to you in Case Number CR2014-0002215 in the Response to Discovery and First Supplemental Response to Discovery:

1. Lewiston Police Department Cap Sheet, pages 1-2.
2. Law Incident Table, pages 3-4.
3. Narrative by White, pages 5-6.
4. Supplemental Narrative by Sparks, page 7.
5. Main Names Table, pages 8-11.
6. Criminal History, pages 12-29.
7. Evidence – Video (1).

Items contained on the attached CD are listed below.

CD consists of the following:
SURVEILLANCE VIDEO (VIDEO)

- 8. Law Incident Table 14-L6176, pages 30-31.**
- 9. Narrative by Petrie 14-L6176, page 32.**
- 10. Supplemental Narrative by Petrie, page 33.**
- 11. Supplemental Narrative by Rigney, page 34.**

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

FILED

2014 SEP 22 PM 4 21

ORIGINAL

CLERK OF THE DISTRICT COURT

DEPUTY:

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,
D.O.B.: 03/19/1983,
S.S.N.: XXX-XX-3949,

Defendant.

CASE NO. CR2014-0004601

SECOND AMENDED INFORMATION

APRIL A. SMITH, Deputy Prosecuting Attorney, in and for the County of Nez Perce, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into the District Court of the County of Nez Perce, and states that TOBY G. WEATHERLY is accused by this **Second** Amended Information of the following crime(s):

COUNT I

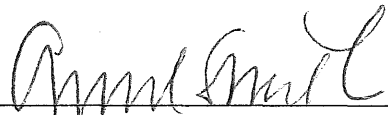
GRAND THEFT, I.C. § 18-2403(3) and 18-2407(1)(b)(3), a felony

That the defendant, TOBY G. WEATHERLY, on or about the 21st day of December 2013, in the County of Nez Perce, State of Idaho, did knowingly exercise unauthorized control over and/or make an unauthorized transfer of interest in the property of another person with the intent of depriving the owner thereof, to wit: by using a financial transaction card belonging to NICHOLAS and/or JENNA WEATHERLY.

COUNT II
CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL
TRANSACTION NUMBER AND FTC FORGERY DEVICES, I.C. § 18-3125(1), a
felony

That the defendant, TOBY G. WEATHERLY, on, about or between 21st day of December 2013 and 23rd day of December 2013, in the County of Nez Perce, State of Idaho, did acquire and/or possess a financial transaction card, to-wit: a Visa Cash Card, without the consent of the cardholder and/or issuer, with the intent to use the financial transaction card to defraud the cardholder and/or issuer.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.



APRIL A. SMITH
Deputy Prosecuting Attorney

SENTENCING ENHANCEMENT

PERSISTENT VIOLATOR, I.C. § 19-2514, in that said Defendant, was previously convicted of the following felonies:

ATTEMPTED ASSAULT II, on or about the 9th day of June, 2011, under the name of TOBY G. WEATHERLY, the Defendant was convicted of the felony of ATTEMPTED ASSAULT II in Case Number C102682CR, in the County of Washington, State of Oregon.

FORGERY, on or about the 21st day of August, 2003, under the name of TOBY G. WEATHERLY, the Defendant was convicted of the felony of FORGERY in Case Number CR2002-0001555, in the County of Nez Perce, State of Idaho.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.



APRIL A. SMITH
Deputy Prosecuting Attorney

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Nez Perce County, Idaho
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

FILED

2014 SEP 22 PM 4 22

PATTY O. WEEKS
CLERK OF THE DIST. COURT


DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

THE STATE OF IDAHO,	)	CASE NO. CR2014-0004601
)	
Plaintiff,	)	STATE'S REQUESTED
	)	INSTRUCTIONS
vs.)	
)	
TOBY G. WEATHERLY,)	
)	
Defendant.)	

Herewith submitted are STATE'S REQUESTED INSTRUCTIONS.

DATED this 22 day of September 2014.



APRIL A. SMITH
Deputy Prosecutor
Nez Perce County, Idaho

AFFIDAVIT OF SERVICE

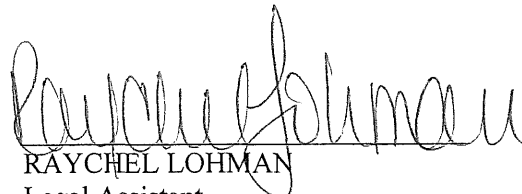
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing STATE'S REQUESTED INSTRUCTIONS was

- (1) _____ hand delivered, or
- (2) X hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Gregory R. Hurn
Kwate Law Office
1502 "G" Street
Lewiston, ID 83501

DATED this 22nd day of September 2014.


RAYCHEL LOHMAN
Legal Assistant

INSTRUCTION NO. 1

The defendant, TOBY G. WEATHERLY, is charged with the crime of GRAND THEFT, I.C. § 18-2403(3) and 18-2407(1)(b)(3), a felony, and CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND FTC FORGERY DEVICES, I.C. § 18-3125(1), a felony, the charging portion of the Amended Information being as follows:

COUNT I

GRAND THEFT, I.C. § 18-2403(3) and 18-2407(1)(b)(3), a felony

That the defendant, TOBY G. WEATHERLY, on or about the 21st day of December 2013, in the County of Nez Perce, State of Idaho, did knowingly exercise unauthorized control over and/or make an unauthorized transfer of interest in the property of another person with the intent of depriving the owner thereof, to wit: by using a financial transaction card belonging to NICHOLAS and/or JENNA WEATHERLY.

COUNT II

CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND FTC FORGERY DEVICES, I.C. § 18-3125(1), a felony

That the defendant, TOBY G. WEATHERLY, on, about or between 21st day of December 2013 and 23rd day of December 2013, in the County of Nez Perce, State of Idaho, did acquire and/or possess a financial transaction card, to-wit: a Visa Cash Card, without the consent of the cardholder and/or issuer, with the intent to use the financial transaction card to defraud the cardholder and/or issuer.

To these charges, the defendant pled "not guilty."

STATE'S REQUESTED INSTRUCTION NO. _____

_____ GIVEN
_____ REFUSED
_____ COVERED

DATED this _____ day of October 2014.

JUDGE

INSTRUCTION NO. 2

In order for the defendant to be guilty of GRAND THEFT, the state must prove each of the following:

1. On or about the 21st day of December, 2013,
2. in the State of Idaho,
3. the Defendant, TOBY G. WEATHERLY took or exercised control over or made a transfer of property interest in a financial transaction card,
4. another person was the owner of the property,
5. with the intent to deprive an owner of the property.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

ICJI 551 - MODIFIED

I.C. § 18-2403(3).

I.C. § 18-2407.

STATE'S REQUESTED INSTRUCTION NO. _____

_____ GIVEN

_____ REFUSED

_____ COVERED

DATED this _____ day of October 2014.

JUDGE

INSTRUCTION NO. 3

The phrase "intent to deprive" means:

- a. The intent to withhold property or cause it to be withheld from an owner permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such owner; or
- b. The intent to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

"Property" means anything of value.

An "owner" of property is any person who has a right to possession of such property superior to that of the defendant.

"Person" means an individual, corporation, association, public or private corporation, city or other municipality, county, state agency or the state of Idaho.

ICJI 577

STATE'S REQUESTED INSTRUCTION NO. _____

_____ GIVEN
_____ REFUSED
_____ COVERED

DATED this _____ day of October 2014.

JUDGE

INSTRUCTION NO. 4

In order for the defendant to be guilty of CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND FTC FORGERY DEVICES, the state must prove each of the following:

1. On, about or in between the 21st day of December, 2013 and 23rd day of December, 2013,
2. in the state of Idaho,
3. the defendant TOBY G. WEATHERLY,
4. acquired a financial transaction card from another without consent of the cardholder or the issuer,
5. with the intent to use to defraud.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

I.C. § 18-3125).
ICJI 822

STATE'S REQUESTED INSTRUCTION NO. _____

_____ GIVEN

_____ REFUSED

_____ COVERED

DATED this _____ day of October 2014.

JUDGE

INSTRUCTION NO. 5

An intent to defraud is an intent to deceive another person for the purpose of gaining some material advantage over that person or to induce that person to part with property or to alter that person's position to the injury or risk of the person, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act designed to deceive.

ICJI 803

STATE'S REQUESTED INSTRUCTION NO. _____

_____ GIVEN

_____ REFUSED

_____ COVERED

DATED this _____ day of October 2014.

JUDGE

INSTRUCTION NO. 6

As used in these instructions, "financial transaction card" or "FTC" means any instrument or device known as a credit card, credit plate, bank services card, banking card, check guarantee card, debit card, telephone credit card or by any other name issued by the issuer for the use of the card holder in obtaining money, goods, services, or anything else of value on credit, or in certifying or guaranteeing to a person or business the availability to the card holder of the funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of such a person or business; or any instrument or device used in providing the card holder access to a demand deposit account or a time deposit account for the purpose of making deposits of money or checks therein, or withdrawing funds in the form of money, money orders, or travelers checks or other representative of value therefrom or transferring funds from any demand account or time deposit account to any credit card account in full or partial satisfaction of any outstanding balance existing therein.

"Financial transaction card account number" or "FTC number" or "FTC account number" means the account number assigned by an issuer to a financial transaction card to identify and account for transactions involving that financial transaction card.

I.C. § 18-3122(6) and (7).
ICJI 821

STATE'S REQUESTED INSTRUCTION NO. _____

_____ GIVEN

_____ REFUSED

_____ COVERED

DATED this _____ day of October 2014.

JUDGE

INSTRUCTION NO. 7

It is alleged that the crime charged was committed "on or about" a certain date. If you find the crime was committed, the proof need not show that it was committed on that precise date.

ICJI 208

STATE'S REQUESTED INSTRUCTION NO. _____

_____ GIVEN
_____ REFUSED
_____ COVERED

DATED this _____ day of October 2014.

JUDGE

INSTRUCTION NO. 8

Under our law and system of justice, the defendant is presumed to be innocent. The presumption of innocence means two things.

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove his innocence, nor does the defendant ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

ICJI 103

STATE'S REQUESTED INSTRUCTION NO. _____

_____ GIVEN

_____ REFUSED

_____ COVERED

DATED this _____ day of October 2014.

JUDGE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

THE STATE OF IDAHO,)	CASE NO. CR2014-0004601
)	
Plaintiff,	)	VERDICT
)	
vs.)	
)	
TOBY G. WEATHERLY,)	
)	
Defendant.)	

We, the Jury, duly empanelled and sworn to try the above-entitled action, for our verdict, unanimously answer the question submitted to us as follows:

QUESTION NO. 1: Is TOBY G. WEATHERLY, guilty or not guilty of GRAND THEFT, I.C. § 18-2403(3) and 18-2407(1)(b)(3), a felony?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 1 "Guilty" or "Not Guilty", please proceed to Question No. 2.

QUESTION NO. 2: Is TOBY G. WEATHERLY, guilty or not guilty of CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND FTC FORGERY DEVICES, I.C. § 18-3125(1), a felony?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 1 "Guilty" or "Not Guilty", please sign the verdict form and advise the bailiff.

DATED this _____ day of October 2014.

Presiding Juror

ICJI 224.

STATE'S REQUESTED INSTRUCTION NO. _____

_____	GIVEN
_____	REFUSED
_____	COVERED

DATED this _____ day of October 2014.

JUDGE

INSTRUCTION NO. 9

Having found the defendant guilty of GRAND THEFT and/or CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND FTC FORGERY DEVICES, you must next consider whether the defendant has been convicted on at least two prior occasions of felony offenses.

The state alleges the defendant has prior convictions as follows:

1. On or about the 9th day of June 2011, the defendant was convicted of Attempted Assault II in Case Number C102682CR in Washington County, Oregon,
2. On or about the 21st day of August, 2003, the defendant was convicted of Forgery in Case Number CR2002-0001555 in Nez Perce County, Idaho,

The existence of a prior conviction must be proved beyond a reasonable doubt and your decision must be unanimous.

ICJI 1601

STATE'S REQUESTED INSTRUCTION NO. _____

_____ GIVEN

_____ REFUSED

_____ COVERED

DATED this _____ day of October 2014.

JUDGE

INSTRUCTION NO. 10

A judicial record of this State may be proved by the production of the original, or a copy thereof, certified by the Clerk or other person having the legal custody thereof.

I.C. § 9-312

STATE'S REQUESTED INSTRUCTION NO. _____

_____ GIVEN

_____ REFUSED

_____ COVERED

DATED this _____ day of October, 2014.

JUDGE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

THE STATE OF IDAHO,)	CASE NO. CR2014-0004601
Plaintiff,	)	VERDICT
vs.)	
TOBY G. WEATHERLY,)	
Defendant.)	

We, the jury, duly sworn and empanelled to try the issues in the above-entitled cause,
unanimously answer the questions submitted to us as follows:

QUESTION NO. 1: Was the defendant convicted of a felony offense of Attempted Assault
II, in the County of Washington, Oregon, Case No. C102682CR?

ANSWER: YES _____ NO _____

QUESTION NO. 2: Was the defendant convicted of a felony offense of Forgery, in the
County of Nez Perce, Idaho, Case No. CR2002-0001555?

ANSWER: YES _____ NO _____

DATED this _____ day of October 2014.

Presiding Juror

ICJI 224.

STATE'S REQUESTED INSTRUCTION NO. _____

_____	GIVEN
_____	REFUSED
_____	COVERED

DATED this _____ day of October 2014.

JUDGE

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8753

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	CASE NO. CR 2014-04601
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT'S PROPOSED
	)	JURY INSTRUCTIONS
Toby G. Weatherly,)	
)	
Defendant.)	
)	

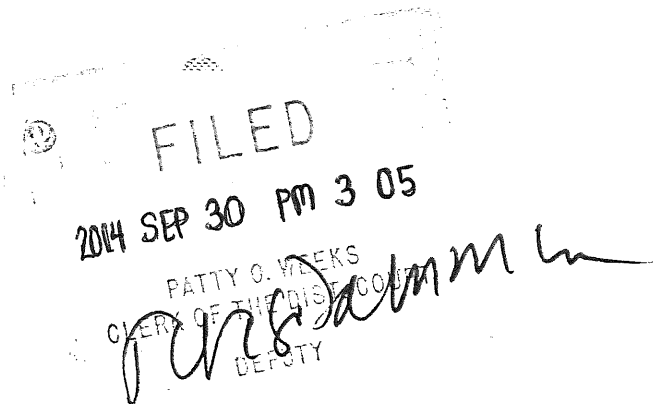
COMES NOW the defendant, Toby G. Weatherly, by and through his attorney of record,
Gregory R. Hurn of Kwate Law Offices, PLLC, hereby submits the attached proposed Jury
Instruction Numbered 1 through 8.

DATED this 30th day of September, 2014.

KWATE LAW OFFICES, PLLC
Attorney for Defendant

By Gregory R. Hurn
Gregory R. Hurn

DEFENDANT'S PROPOSED
JURY INSTRUCTION



CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2014, a true and correct copy of the foregoing instrument was:

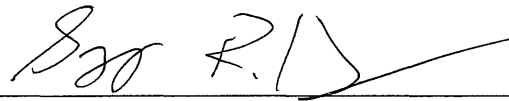
☐ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

to the following:

April A. Smith
Nez Perce County Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By



INSTRUCTION NO. 1

A defendant in a criminal action is presumed to be innocent. This presumption places upon the state the burden of proving the defendant guilty beyond a reasonable doubt. Thus, a defendant, although accused, begins the trial with a clean slate with no evidence against the defendant. If, after considering all the evidence and my instructions on the law, you have a reasonable doubt as to the defendant's guilt, you must return a verdict of not guilty.

Reasonable doubt is defined as follows: It is not mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is the state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

Comment

This is the standard "reasonable doubt" instruction that has been approved by the Supreme Court for use in Idaho. See State v. Rhoades, 121 Idaho 63, 82, 822 P.2d 960, 979 (1991); State v. Cotton, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). An alternative, proposed by the ICJI Committee but not approved as to form or content by case-law decision of the Supreme Court, appears as ICJI 103A.

ICJI 301
EFFECT OF DEFENDANT'S ELECTION NOT TO TESTIFY

INSTRUCTION NO. 2

A defendant in a criminal trial has a constitutional right not to be compelled to testify. The decision whether to testify is left to the defendant, acting with the advice and assistance of the defendant's lawyer. You must not draw any inference of guilt from the fact that the defendant does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

ICJI 110
CONSIDER EACH COUNT SEPARATELY

INSTRUCTION NO. 3

Each count charges a separate and distinct offense. You must decide each count separately on the evidence and the law that applies to it, uninfluenced by your decision as to any other count. The defendant may be found guilty or not guilty on any or all of the offenses charged.

Comment

This instruction should be used where the defendant is on trial for more than one offense.

INSTRUCTION NO. 4

In order for the defendant to be guilty of Grand Theft, the state must prove each of the following:

1. On or about December 21, 2013,
2. in the state of Idaho,
3. the defendant, Toby G. Weatherly, wrongfully took, property described as: a financial card,
4. from an owner, Nicholas and/or Jenna Weatherly
5. with the intent to deprive an owner of the property or to appropriate the property, and
6. the property was a financial card.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty of Grand Theft. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty of Grand Theft.

Comment

I.C. § 18-2407.

Effective July 1, 1999, the value of property necessary to constitute grand theft was increased from \$300 to \$1,000.

See I.C. § 18-3123(6) for the definition of a “financial transaction card.”

Using ICJI 540 and ICJI 542 is intended to eliminate the need of instructing that Petit Theft is an included offense of Grand Theft.

CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD OR FINANCIAL
TRANSACTION ACCOUNT NUMBER

INSTRUCTION NO. 5

In order for the defendant to be guilty of Criminal Possession of a Financial Transaction Card or Financial Transaction Account Number, the state must prove each of the following:

1. On or about December 21, 2013 and December 23, 2013,
2. in the state of Idaho,
3. the defendant, Toby G. Weatherly,
4. acquired an Financial Transaction Card from another without the consent of the card holder or the issuer,
5. with the intent to use to defraud.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-3125.

ICJI 562
INTENT TO APPROPRIATE OR DEPRIVE DEFINED

INSTRUCTION NO. 6

The phrase "intent to deprive" means:

- a. The intent to withhold property or cause it to be withheld from an owner permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such owner; or
- b. The intent to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

Comment

I.C. § 18-2402(1).

INTENT TO APPROPRIATE OR DEPRIVE DEFINED

INSTRUCTION NO. 7

The phrase "intent to appropriate" means:

- a. The intent to exercise control over property, or to aid someone other than the owner to exercise control over it, permanently or for so extended a period of time or under such circumstances as to acquire the major portion of its economic value or benefit; or
- b. The intent to dispose of the property for the benefit of oneself or someone other than the owner.

Comment

I.C. § 18-2402(1).

ICJI 821

FINANCIAL TRANSACTION CARD DEFINED

INSTRUCTION NO. 8

As used in these instructions, "financial transaction card" or "FTC" means any instrument or device known as a credit card, credit plate, bank services card, banking card, check guarantee card, debit card, telephone credit card or by any other name issued by the issuer for the use of the card holder in obtaining money, goods, services, or anything else of value on credit, or in certifying or guaranteeing to a person or business the availability to the card holder of the funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of such a person or business; or any instrument or device used in providing the card holder access to a demand deposit account or a time deposit account for the purpose of making deposits of money or checks therein, or withdrawing funds in the form of money, money orders, or travelers checks or other representative of value therefrom or transferring funds from any demand account or time deposit account to any credit card account in full or partial satisfaction of any outstanding balance existing therein.

Comment

I.C. § 18-3122(4).

COURT MINUTES

CR-2014-0004601

State of Idaho vs. Toby Glenn Weatherly

Hearing type: Final Pretrial

Hearing date: 9/30/2014

Time: 1:41 pm

Judge: Jay P. Gaskill DJ

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Kwate Law Office PD 2014

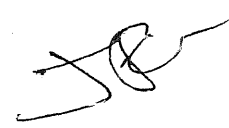
Prosecutor: April Smith

14125 Defendant present with counsel.

14133 Ms. Smith addresses the Court and the parties are prepared to go to trial next
Monday.

14305 Mr. Hurn addresses the Court and submitted his jury instructions today.

14329 Court recess.

A handwritten signature in black ink, appearing to be 'JR' or similar, located in the lower right quadrant of the page.

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

APRIL A. SMITH
Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 7009

FILED

2014 OCT 1 PM 4 20

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

Defendant.

CASE NO. CR2014-0004601

**FOURTH SUPPLEMENTAL RESPONSE
TO REQUEST FOR DISCOVERY**

COMES NOW, APRIL A. SMITH, Deputy Prosecuting Attorney, for Nez Perce County, Idaho, and pursuant to Defendant's Request for Discovery in the case herein, makes the following supplemental disclosure compliance pursuant to Idaho Criminal Rules, Rule 16.

1. That attached hereto is AMENDED EXHIBIT "B" which sets forth additional reports.

DATED this 1st day of October 2014.

[Signature]

APRIL A. SMITH
Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing FOURTH SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY was

- (1) _____ hand delivered, or
- (2) X hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Gregory R. Hurn
Kwate Law Office
1502 "G" Street
Lewiston, ID 83501

DATED this 1st day of October 2014.

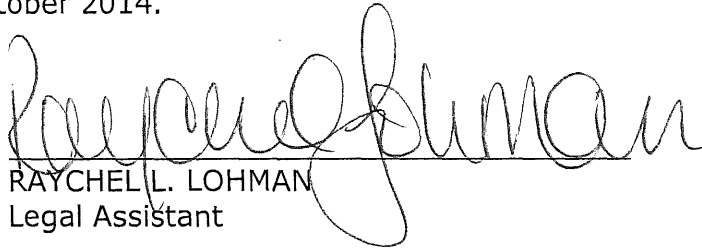

RAYCHEL L. LOHMAN
Legal Assistant

EXHIBIT "A"
LIST OF WITNESSES

STATE OF IDAHO vs. TOBY G. WEATHERLY
NEZ PERCE COUNTY CASE NO. CR2014-0004601

1. NAME: JENNA R. WEATHERLY
ADDRESS: 3635 12th Street
Lewiston, Idaho 83501
PHONE: (208) 791-1580

2. NAME: DOCK L. WHITE
ADDRESS: Lewiston Police Department
1224 "F" Street
Lewiston, Idaho 83501
PHONE: (208) 750-6355

3. NAME: TOM SPARKS
ADDRESS: Lewiston Police Department
1224 F Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

4. NAME: AMANDA WOMACK
ADDRESS: Lewiston Police Department
1224 F Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

5. NAME: NICHOLAS G. WEATHERLY
ADDRESS: 3635 12th Street
Lewiston, Idaho 83501
PHONE: (208) 816-1822

6. NAME: DOUGLAS PURDY
ADDRESS: Zions Bank
3506 12th Street
Lewiston, Idaho 83501
PHONE: (208) 746-0151

AMENDED EXHIBIT "B"
AMENDED LIST OF REPORTS

STATE OF IDAHO vs. TOBY G. WEATHERLY
NEZ PERCE COUNTY CASE NO. CR2014-0004601

This case was refiled. Numbers 1-7 were previously provided to you in Case Number CR2014-0002215 in the Response to Discovery and First Supplemental Response to Discovery:

1. Lewiston Police Department Cap Sheet, pages 1-2.
2. Law Incident Table, pages 3-4.
3. Narrative by White, pages 5-6.
4. Supplemental Narrative by Sparks, page 7.
5. Main Names Table, pages 8-11.
6. Criminal History, pages 12-29.
7. Evidence – Video (1).

Items contained on the attached CD are listed below.

CD consists of the following:
SURVEILLANCE VIDEO (VIDEO)

8. Law Incident Table 14-L6176, pages 30-31.
9. Narrative by Petrie 14-L6176, page 32.
10. Supplemental Narrative by Petrie, page 33.
11. Supplemental Narrative by Rigney, page 34.
- 12. Washington County Prior C102682CR, pages 35-38.**
- 13. Nez Perce County Prior CR02-1555, pages 39-43.**

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8753

Attorney for Defendant

FILED
2014 OCT 3 PM 2 16

PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	Case No. CR 2014-04601
)	
Plaintiff,)	
)	
vs.	)	MOTION IN LIMINE
	)	TO EXCLUDE EVIDENCE
Toby G. Weatherly,)	
)	
Defendant.)	
)	

COMES NOW the defendant, Toby G. Weatherly, by and through his attorney of record, Gregory R. Hurn, of Kwate Law Offices, PLLC, and hereby moves to exclude from evidence at the trial of this matter the defendant's Judgment of Conviction and Sentence in Washington County Case No. C102682CR (DA 10-11196), the Indictment in Washington County Case No. C102682CR, and the Judge of Conviction and Order Suspending Sentence in Nez Perce County Case No. CR 2002-01555, in the State's Fourth Supplemental Response to Request for Discovery that was received on October 2, 2014.


MOTION IN LIMINE
TO EXCLUDE EVIDENCE

The defendant moves the court for an order excluding such evidence pursuant to Idaho Criminal Rule 12 and 16, and Idaho Code § 19-1309(7). The defendant filed with the Court a Request for Discovery on June 16, 2014, pursuant to Idaho Criminal Rule 16. The defendant received State's Fourth Supplemental Response to Request for Discovery on October 2, 2014. This response and material was received by the defendant four (4) days before trial and is therefore untimely and should be excluded as evidence at trial.

The defense also requests the opportunity to be heard on this motion and reserves the right to present evidence at the time of hearing on the motion.

DATED this 3rd day of October, 2014.

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

CERTIFICATE OF SERVICE


I hereby certify that on the 3rd day of October, 2014, a true and correct copy of the foregoing instrument was:

☐ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

to the following :

April A. Smith
Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

COURT MINUTES

CR-2014-0004601

State of Idaho vs. Toby Glenn Weatherly

Hearing type: Jury Trial

Hearing date: 10/6/2014

Time: 9:14 am

Judge: Jay P. Gaskill DJ

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: April Smith

35 jurors previously drawn: Daniel Port, Earlene Weber, Helen Shoemaker, Linda Williams, Michael Ahlers, Christina Guzman, Randi Colwell, Terema Carlin, Deborah Henry, Tony Aslin, Amber Lounser, Shannon Hewett, Elaine Roberts, Corrine Truksa, Brian Hemphill, Angela Clapp, Walter Dugger, Mary Flinn, Sharon Pupo, Sherrie Beckman, Malea Hill, Corinne Zenner, Robyn Carlson, Christy Weidner, Lewis List, Michael Rice, Rachael Richie, Kathleen Connerley, Kelli Smith, Deborah Trost, Colleen Schlangen, William Yochum, Douglas Welch, Joan Richardson and Melissa Evans.

91450 Ms. Smith, Mr. Hurn and Defendant present and ready to proceed.

91501 Court addresses perspective jurors.

91758 Mr. Hurn has no challenges to the panel.

91800 Ms. Smith has no challenges to the panel.

91809 Clerk administers jury voir dire oath.

91838 Court calls juror Caroline Stephens to take chair #34 and Georgieann Hewett to take chair #35.

91940 Court addresses perspective jurors.

92100 Ms. Smith makes introduction, list other attorneys in the prosecutor's office, list support staff and witnesses she intends to call.

92210 Mr. Hurn makes introduction, list the other attorney in his office and indicates he does not anticipate calling any witnesses.

92244 Court addresses perspective jurors.

92328 Court begins voir dire.

92918 Court excuses juror #2 Earlene Weber. Court calls Justin Green.

93010 Court addresses juror Justin Green.

93023 Court continues with voir dire.

93141 Ms. Smith begins voir dire.

95445 Mr. Hurn begins voir dire.

100058 Ms. Smith passes panel for cause.

100059 Mr. Hurn passes panel for cause.

100126 Peremptory challenges off the record.

STATE

DEFENSE

1. Daniel Port

1. Terema Carlin

2. Pass

2. Shannon Hewett

3. Brian Hemphill

3. Michael Ahlers

4. Walter Dugger

4. Helen Shoemaker

5. Pass

5. Sharon Pupo

6. Malea Hill

6. Pass

7. Pass

101142 The jury is constituted as follows: Corrine Truksa, Justin Green, Sherrie Beckman, Linda Williams, Mary Flinn, Christina Guzman, Randi Colwell, Corinne Zenner, Deborah Henry, Tony Aslin, Amber Lounsberry, Angela Clapp & Elaine Roberts.

101210 Court addresses jurors.

101435 Ms. Smith accepts this jury.

101438 Mr. Hurn accepts this jury.

101445 Clerk administers oath to try the case.

101505 Court addresses remaining jurors and excuses them from the courtroom.

101737 Court addresses the jury. Court recess 30 minutes.

101817 Court admonishes the jury.

101840 Court recess.

105005 All parties present and ready to proceed.

105014 Court addresses the parties re: Defendant's Motion in Limine.

105027 Mr. Hurn addresses the Court re: Motion in Limine.

105040 Ms. Smith addresses the Court re: Motion in Limine.

105144 Court denies motion at this time.

105156 Ms. Smith addresses the Court re: if Defendant decides to testify.

105402 Bailiff brings in the jury, all members present.

105527 Court addresses the jury. Court reads opening instructions.

110026 Court reads 2nd Amended Information.

110223 Ms. Smith presents opening statement.

110602 Mr. Hurn presents opening statement.

110910 Ms. Smith calls, Nicholas Weatherly, sworn, Ms. Smith begins direct examination.

111135 Court excuses jury from the courtroom.

111215 Mr. Hurn addresses the Court re: objection.

111326 Court addresses Mr. Hurn. Mr. Hurn responds.

111454 Ms. Smith responds.

111540 Mr. Hurn responds.

111607 Ms. Smith responds.

111649 Mr. Hurn responds.

111730 Court addresses counsel.

111831 Ms. Smith responds.

111911 Mr. Hurn responds.

112026 Court addresses Mr. Hurn.

112115 Court addresses counsel.

112126 Bailiff brings in the jury, all members present.

112221 Court addresses the jury re: stipulation that Nicholas and Jenna Weatherly were the owners of the financial transaction card in question.

112247 Ms. Smith continues with direct examination Nicholas Weatherly.

113034 Mr. Hurn begins cross examination Nicholas Weatherly.

114057 Ms. Smith begins redirect examination Nichols Weatherly.

114423 Mr. Hurn begins recross examination Nicholas Weatherly.

114650 Witness steps down.

114701 Ms. Smith calls officer Dock White, sworn, Ms. Smith begins direct examination.

115134 Mr. Hurn begins cross examination officer Dock White.

115253 Witness steps down.

115321 Court recess until 1:00 p.m.

115334 Court recess.

10808 All parties present and ready to proceed. Bailiff brings in the jury, all members present.

10904 Ms. Smith calls Douglas Purdy, sworn, Ms. Smith begins direct examination.

11103 Ms. Smith has witness handed State's exhibit #2.

11118 Ms. Smith continues direct examination Douglas Purdy.

11145 Ms. Smith offers State's exhibit #2.

11156 Mr. Hurn questions witness in aid of an objection.

11243 Mr. Hurn presents objection.

11253 Ms. Smith continues direct examination Douglas Purdy.

11328 Ms. Smith again offers State's exhibit #2.

11335 Mr. Hurn questions witness in aid of an objection.

11421 Mr. Hurn presents objection.

11426 Court overrules objection and admits State's exhibit #2.

11540 Ms. Smith plays State's exhibit #2 for the jury.

11609 Ms. Smith continues direct examination Douglas Purdy.

11717 Ms. Smith offers State's exhibit #1.

11724 Mr. Hurn objects.

11743 Court admits State's exhibit #1.

11757 Witness steps down.

11825 Ms. Sith calls officer Tom Sparks, sworn, Ms. Smith begins direct examination.

12348 Witness steps down.

12401 Ms. Smith calls Jenna Weatherly.

12453 Court admonishes the jury and excuses them from the courtroom.

12524 Court recess 5 minutes.

13118 All parties present and ready to proceed. Bailiff brings in the jury, all members present.

13211 Ms. Smith calls Jenna Weatherly, sworn, Ms. Smith begins direct examination.

14041 Mr. Hurn begins cross examination Jenna Weatherly.

14610 Ms. Smith begins redirect examination Jenna Weatherly.

14741 Mr. Hurn begins recross examination Jenna Weatherly.

14833 Witness steps down.

14849 Ms. Smith indicates the State rests.

14857 Mr. Hurn addresses the Court.

14912 Court excuses the jury from the courtroom.

14946 Mr. Hurn moves for Judgment of Acquittal.

15033 Ms. Smith responds.

15151 Mr. Hurn responds.

15255 Court addresses counsel and denies motion.

15413 Court recess 20 minutes.

21739 Court addresses counsel re: jury instructions.

21750 Ms. Smith addresses the Court re: grand theft elements.

21927 Ms. Smith disregard the grand theft elements and indicates there are 2 on or about instructions.

21954 Mr. Hurn addresses the Court re: adding instruction for mistake of fact and lesser included offense petit theft.

22058 Bailiff brings in the jury, all members present.

22155 Court addresses the jury.

22212 Mr. Hurn calls Nicholas Weatherly.

22236 Court reminds witness he is still under oath.

22249 Mr. Hurn begins direct examination Nicholas Weatherly.

22523 Ms. Smith begins cross examination Nicholas Weatherly.

22703 Mr. Hurn begins redirect examination Nicholas Weatherly.

23048 Witness steps down.

23057 Mr. Hurn indicates Defense rests.

23107 Court and counsel meet at sidebar.

23439 Court addresses the jury.

23523 Court admonishes the jury and excuses them from the courtroom.

23552 Court recess.

24851 All parties present and ready to proceed. Bailiff brings in the jury, all members present.

24950 Court addresses the jury.

25009 Court reads final instructions to the jury.

31113 Ms. Smith presents closing argument.

32553 Mr. Hurn presents closing argument.

33845 Ms. Smith presents rebuttal argument.

34340 Court addresses the jury.

34408 Clerk draws alternate juror Randi Colwell.

34500 Clerk administers oath of Bailiff.

34547 Court excuses the jury from the courtroom to begin deliberating.

34633 Court recess.

45413 All parties present and ready to proceed. Bailiff brings in the jury, all members present.

45512 Presiding juror hands verdict to Bailiff.

45533 Clerk reads verdict. Guilty to Count 1 Grand Theft and guilty to Count 2 Criminal Possession of a Financial Transaction Card.

45636 Jurors indicate that that is their verdict.

45643 Mr. Hurn requests the jury be polled.

45650 Court polls jury.

45733 Court and counsel meet at sidebar.

45857 Ms. Smith addresses the Court re: State's exhibit #3 & #4.

50006 Mr. Hurn renews objection.

50015 Court overrules objection and admits State's exhibit #3 & #4.

50032 Ms. Smith has no evidence.

50035 Mr. Hurn has no evidence.

50107 Court reads additional instructions to the jury.

50343 Ms. Smith presents closing argument.

50525 Mr. Hurn presents closing argument.

50609 Court recess. Jury begins deliberating.

52422 Ms. Smith and Mr. Hurn present. Defendant not present.

52443 Mr. Hurn addresses the Court re: Defendant refusing to come back.

52500 Bailiff brings in the jury, all members present.
52540 Presiding Juror hand verdict to the Bailiff.
52555 Clerk reads the verdict.
52701 Ms. Smith does not want jury polled.
52706 Mr. Hurn does not want jury polled.
52709 Court addresses the jury and excuses them.
52834 Court recess.
52009 Court sets sentencing for 11-20-14 at 2:30 p.m. PSI due 11-13-14.
52927 Court recess.

A handwritten signature in black ink, appearing to be 'JR' with a stylized flourish.

ate: 10/7/2014

Second Judicial District Court - Nez Perce County

User: TERESA

ime: 07:36 AM

Exhibit Summary

age 1 of 1

Case: CR-2014-0004601

State of Idaho vs. Toby Glenn Weatherly

Sorted by Exhibit Number

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
2	State's exhibit #1 screen shot from video ADMITTED AT JURY TRIAL 10-6-14	Admitted	RECORDS MANAGER		
		Assigned to:	Smith, April A		
3	State's exhibit #2 video from Zions Bank ADMITTED AT JURY TRIAL 10-6-14	Admitted	RECORDS MANAGER		
		Assigned to:	Smith, April A		
4	State's exhibit #3 copy judgment of conviction county of Washington state of Oregon ADMITTED AT JURY TRIAL 10-6-14	Admitted	RECORDS MANAGER		
		Assigned to:	Smith, April A		
5	State's exhibit #4 copy judgment of conviction and order suspending sentence Nez Perce County ADMITTED AT JURY TRIAL 10-6-14	Admitted	RECORDS MANAGER		
		Assigned to:	Smith, April A		

October 6, 2014

FILED

4:55

A.M.
O'CLOCK P.M.

Patty O. Weeks
Clerk of the District Court

By W. J. Damm Deputy

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)
)
Plaintiff,)
)
v.)
)
TOBY G. WEATHERLY,)
)
Defendant.)
_____)

CASE NO. CR 2014-004601

JURY VERDICT FORM

We, the Jury, duly empanelled and sworn to try the above-entitled action, for our verdict,
unanimously answer the questions submitted to us as follows:

QUESTION NO. 1: Is the Defendant, Toby G. Weatherly, guilty or not guilty of Grand
Theft, as charged in Count I?

_____ NOT GUILTY

_____ X GUILTY

QUESTION NO. 2: Is the Defendant, Toby G. Weatherly, guilty or not guilty of
Criminal Possession of a Financial Transaction Card, Financial Transaction Number and FTC
Forgery Device, as charged in Count II?

_____ NOT GUILTY

_____ X GUILTY

DATED this 6 day of October, 2014.

W. J. Damm
Presiding Juror

October 6, 2014

FILED

5:25

A.M.
P.M.

Patty O. Weeks
Clerk of the District Court
[Signature]

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)
)
Plaintiff,)
)
v.)
)
TOBY G. WEATHERLY,)
)
Defendant.)
_____)

CASE NO. CR 2014-004601

JURY VERDICT FORM

We, the Jury, duly empanelled and sworn to try the above-entitled action, for our verdict,
unanimously answer the questions submitted to us as follows:

QUESTION NO. 1: Was the defendant convicted of a felony offense of Attempted
Assault II, in the County of Washington, Oregon, Case No. C102682CR?

ANSWER: YES X NO _____

QUESTION NO. 2: Was the defendant convicted of a felony offense of Forgery, in the
County of Nez Perce, Idaho, Case No. CR2002-001555?

ANSWER: YES X NO _____

DATED this 6 day of October, 2014.

[Signature]
Presiding Juror

FILED

2014 OCT 7 AM 10 08

PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

Pursuant to

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

Defendant.

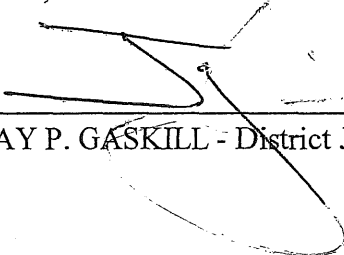
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CASE NO. CR 14-04601

INSTRUCTIONS SUBMITTED
TO THE JURY

The attached instructions No. 1 through No. 25 were given to the jury this 6th day of
October, 2014.

DATED this 7th day of October, 2014.



JAY P. GASKILL - District Judge

INSTRUCTION NO. 1

You will notice that many, but not all, of these instructions that I am about to read to you are identical to those read to you at the beginning of this trial. It is not the intent of the Court to lay any special emphasis on those instructions. The only reason they are again given to you is so that all of the instructions concerning this case will be fresh in your minds and of equal importance when you start your deliberations.

INSTRUCTION NO. 2

During your deliberations, you will have with you my instructions concerning the law that applies to this case, the exhibits that were admitted into evidence, and any notes taken by you in the course of the trial proceedings.

INSTRUCTION NO. 3

Your duties are to determine the facts, to apply the law set forth in my instructions to those facts, and in this way to decide the case. In so doing, you must follow my instructions regardless of your own opinion of what the law is or should be, or what either side may state the law to be. You must consider them as a whole, not picking out one and disregarding others. The order in which the instructions are given has no significance as to their relative importance. The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consisted of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. The production of evidence in court is governed by rules of law. At times during the trial, an objection may have been made to a question asked of a witness, or to a witness's answer, or to an exhibit. This simply means that I was asked to decide a particular rule of law. The parties' arguments on the admissibility of evidence were designed to aid the Court and are not to be considered by you nor affect your deliberations. If I sustained an objection to a question or to an exhibit, the witness was instructed not to answer the question or the exhibit was not admitted. Do not attempt to guess what the answer might have been or what the exhibit might have shown. Likewise, if I told you not to consider a particular statement or exhibit, you should put it out of your mind and not refer to it or rely on it in your deliberations.

During the trial I may have spoken with the parties about the rules of law that should apply in this case. Sometimes we talked here at the bench. At other times I excused you from the courtroom so that you could be comfortable while we worked out any problems. You are not

to speculate about any such discussions. They were necessary from time to time and helped the trial run more smoothly.

Some of you have probably heard the terms “circumstantial evidence,” “direct evidence” and “hearsay evidence.” Do not be concerned with these terms. You are to consider all the evidence admitted in this trial.

However, the law does not require you to believe all the evidence. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations that you should apply in your deliberations.

In deciding what you believe, do not make your decision simply because more witnesses may have testified one way than the other. Your job is to think about the testimony of each witness you heard and decide how much you believe of what he or she had to say.

INSTRUCTION NO. 4

In every crime or public offense, there must exist a union, or joint operation, of act and intent.

INSTRUCTION NO. 5

As members of the jury, it is your duty to decide what the facts are and to apply those facts to the law that I have given you. You are to decide the facts from all the evidence presented in the case.

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits that have been admitted into evidence.

Certain things you have heard or seen are not evidence, including:

1. arguments and statements by lawyers. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is included to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory;
2. testimony that has been excluded or stricken, or that you have been instructed to disregard;
3. anything you may have seen or heard when the court was not in session.

INSTRUCTION NO. 6

You are instructed that the Defendant, TOBY G. WEATHERLY, is charged with the crime of GRAND THEFT, I.C. § 18-2403(3) and 18-2407(1)(b)(3), a felony, and CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND FTC FORGERY DEVICES, I.C. § 18-3125(1), the charging portion of the Amended Information being:

COUNT I

GRAND THEFT, I.C. § 18-2403(3) AND 18-2407(1)(b)(3), a felony

That the defendant, TOBY G. WEATHERLY, on or about the 21st day of December 2013, in the County of Nez Perce, State of Idaho, did knowingly exercise unauthorized control over and/or make the unauthorized transfer of interest in the property of another person with the intent of depriving the owner thereof, to wit: by using a financial transaction card belonging to NICHOLAS and/or JENNA WEATHERLY.

COUNT II

CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD,
FINANCIAL TRANSACTION NOUMBER AND FTC FORGERY DEVICES,
I.C. § 18-3125(1), a felony

That the defendant, TOBY G. WEATHERLY, on, about or between the 21st day of December 2013 and 23rd day of December 2013, in the County of Nez Perce, State of Idaho, did acquire and/or possess a financial transaction, to wit: a Visa Cash Card, without the consent of the cardholder and/or issuer, with the intent to use the financial transaction card to defraud the cardholder and/or issuer.

To these charges, the Defendant pled "not guilty."

INSTRUCTION NO. 7

An Amended Information is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused.

INSTRUCTION NO. 8

You will notice that the Information charges that the offense was committed "on or about" a certain date. If the jury finds that the crime charged was committed, it is not necessary that the proof show that it was committed on that precise date.

It is sufficient if the proof shows beyond a reasonable doubt that the crime charged was committed "on or about" the date alleged.

INSTRUCTION NO. 9

Under our law and system of justice, the defendant is presumed to be innocent. The presumption of innocence means two things.

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove his innocence, nor does the defendant ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

INSTRUCTION NO. 10

A defendant in a criminal trial has a constitutional right not to be compelled to testify. The decision whether to testify is left to the defendant, acting with the advice and assistance of the defendant's lawyer. You must not draw any inference of guilt from the fact that the defendant does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 11

Each count charges a separate and distinct offense. You must decide each count separately on the evidence and the law that applies to it, uninfluenced by your decision as to any other count. The defendant may be found guilty or not guilty on either or both of the offenses charged.

INSTRUCTION NO. 12

In order for the defendant to be guilty of Grand Theft, the state must prove each of the following:

1. On or about December 21, 2013,
2. in the state of Idaho,
3. the defendant Toby G. Weatherly took or exercised control over or made a transfer of property interest in a financial transaction card,
4. another person was the owner of the property,
5. the defendant knew that the defendant was not authorized by the owner to do so, and
6. the defendant had the intent to deprive the owner of such property.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

INSTRUCTION NO. 13

The phrase "intent to deprive" means:

a. The intent to withhold property or cause it to be withheld from an owner permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such owner; or

b. The intent to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

"Property" means anything of value.

An "owner" of property is any person who has a right to possession of such property superior to that of the defendant.

"Person" means an individual, corporation, association, public or private corporation, city or other municipality, county, state agency or the state of Idaho.

INSTRUCTION NO. 14

In order for the defendant to be guilty of Criminal Possession of a Financial Transaction Card or Financial Transaction Account Number, the state must prove each of the following:

1. On, about or between December 21, 2013 and December 23, 2013,
2. in the state of Idaho,
3. the defendant Toby G. Weatherly,
4. acquired a financial transaction card without the consent of the card holder or the issuer,
5. with the intent to use to defraud.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

INSTRUCTION NO. 15

An intent to defraud is an intent to deceive another person for the purpose of gaining some material advantage over that person or to induce that person to part with property or to alter that person's position to the injury or risk of the person, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act designed to deceive.

INSTRUCTION NO. 16

As used in these instructions, "financial transaction card" or "FTC" means any instrument or device known as a credit card, credit plate, bank services card, banking card, check guarantee card, debit card, telephone credit card or by any other name issued by the issuer for the use of the card holder in obtaining money, goods, services, or anything else of value on credit, or in certifying or guaranteeing to a person or business the availability to the card holder of the funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of such a person or business; or any instrument or device used in providing the card holder access to a demand deposit account or a time deposit account for the purpose of making deposits of money or checks therein, or withdrawing funds in the form of money, money orders, or travelers checks or other representative of value therefrom or transferring funds from any demand account or time deposit account to any credit card account in full or partial satisfaction of any outstanding balance existing therein.

"Financial transaction card account number" or "FTC number" or "FTC account number" means the account number assigned by an issuer to a financial transaction card to identify and account for transactions involving that financial transaction card.

INSTRUCTION NO. 17

For the defendant to be guilty of Grand Theft or Criminal Possession of a Financial Transaction Card, Financial Transaction Number and FTC Forgery Device, the state must prove the defendant had a particular intent. Evidence was offered that at the time of the alleged offense the defendant mistakenly believed certain facts. You should consider such evidence in determining whether the defendant had the required intent.

If from all the evidence you have a reasonable doubt whether the defendant had such intent, you must find the defendant not guilty.

INSTRUCTION NO. 18

Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict. If you find the Defendant guilty, it will be my duty to determine the appropriate penalty or punishment.

INSTRUCTION NO. 19

If during the trial I said or did anything which suggested to you that I was inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I did not express nor intend to express, nor did I intend to intimate, any opinion as to which witnesses were or were not worthy of belief; what facts were or were not established; or what inferences should be drawn from the evidence. If any expression of mine seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

At times I may have used the word "victim" in these instructions or in the course of this trial. This word was used only to refer to a person or persons who are alleged to have been victimized, and was used only for convenience. It does not indicate any opinion on my part that a person is a victim, or that the defendant has committed an offense. Whether a person is a victim, and whether the defendant is guilty of any offense, are matters for you alone to determine based on the evidence presented at trial.

INSTRUCTION NO. 20

In reaching your verdict in this action, you are to be guided and controlled only by the evidence adduced at this trial and the instructions now given to you by the Court. In case any of you have received information, or what purports to be information, from any other source other than the facts in this case, you are admonished and instructed to exclude such extraneous information or purported information from all consideration. Your verdict should be based exclusively upon the evidence offered at this trial, and should in no way be influenced by any rumor, feeling, or influence coming from any quarter either before or during this trial.

INSTRUCTION NO. 21

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you, and then you will retire to the jury room for your deliberations.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

The attitude and conduct of jurors at the beginning of your deliberations are important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or to state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused, and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case, together with the law that relates to this case as contained in these instructions.

During your deliberations, you each have a right to re-examine your own views and change your opinion. You should only do so if you are convinced by fair and honest discussion that your original opinion was incorrect based upon the evidence the jury saw and heard during the trial and the law as given you in these instructions.

Consult with one another. Consider each other's views, and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant because the majority of the jury feels otherwise or for the purpose of returning a unanimous verdict.

INSTRUCTION NO. 22

The original instructions and the exhibits will be with you in the jury room. They are part of the official court record. For this reason please do not alter them or mark on them in any way.

The instructions are numbered for convenience in referring to specific instructions. There may or may not be a gap in the numbering of the instructions. If there is, you should not concern yourselves about such gap.

INSTRUCTION NO. 23

Upon retiring to the jury room, select one of you as a presiding juror, who will preside over your deliberations. It is that person's duty to see that discussion is orderly; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question.

In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding juror will sign it and you will return it into open court.

Your verdict in this case cannot be arrived at by chance, by lot, or by compromise.

If, after considering all of the instructions in their entirety, and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a note by the bailiff. You are not to reveal to me or anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so.

A verdict form suitable to any conclusion you may reach will be submitted to you with these instructions.

INSTRUCTION NO. 24

In this case you will return a verdict consisting of two questions. Although the explanations on the verdict form are self-explanatory, they are part of my instructions to you. The verdict form states:

“We, the Jury, duly empanelled and sworn to try the above-entitled action, for our verdict, unanimously answer the questions submitted to us as follows:

QUESTION NO. 1: Is the Defendant, Toby G. Weatherly, guilty or not guilty of Grand Theft, as charged in Count I?

_____ NOT GUILTY _____ GUILTY

QUESTION NO. 2: Is the Defendant, Toby G. Weatherly, guilty or not guilty of Criminal Possession of a Financial Transaction Card, Financial Transaction Number and FTC Forgery Device, as charged in Count II?

_____ NOT GUILTY _____ GUILTY”

When all of you arrive at a verdict, the presiding juror will mark the appropriate verdict, sign and date the verdict form, and inform the bailiff you are done. You will then be returned into court where your presiding juror will, at my direction, hand the verdict form to the bailiff who will hand it to me. I will then direct the Clerk to read the verdict aloud and to record the verdict. Your presiding juror will be asked if this is your verdict and that juror will give your answer to the court.

INSTRUCTION NO. 25

The State will now be given the opportunity to present summation to you. Following this, the defense will be afforded the opportunity to present summation. Then the State may present rebuttal argument.

FILED

2014 OCT 7 AM 10 08

PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

[Handwritten signature]

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

Defendant.

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CASE NO. CR 14-04601

INSTRUCTIONS SUBMITTED
TO THE JURY

The attached instructions No. 01 through No. 04 were given to the jury this 6th day of
October, 2014.

DATED this 7th day of October, 2014.

[Handwritten signature]

JAY P. GASKILL - District Judge

INSTRUCTION NO. 21

Having found the defendant guilty of Grand Theft and/or Criminal Possession of a Financial Transaction Card, Financial Transaction Number and FTC Forgery Devices, you must next decide whether the defendant has been convicted on at least two prior occasions of felony offenses.

The State alleges the defendant has prior convictions as follows:

1. On or about 9th day of June, 2011, the defendant was convicted of Attempted Assault II in case number C102628CR, in Washington County, Oregon.
2. On or about the 21st day of August, 2003, the defendant was convicted of Forgery in case number CR2002-001555, in Nez Perce County, Idaho.

The existence of a prior conviction must be proved beyond a reasonable doubt and your decision must be unanimous.

INSTRUCTION NO. 02

A person is convicted of a crime when the court, pursuant to a plea of “guilty” or the “guilty” verdict of a jury, adjudges the defendant guilty of the particular offense.

INSTRUCTION NO. DS

A judicial record of this state, or of the United States, may be proved by the production of the original, or by a copy thereof, certified by the clerk or other person having the legal custody thereof.

INSTRUCTION NO. 04

In this portion of the case, you will return a verdict consisting of two questions you should answer. Since the explanations on the form that you will have are part of my instructions to you, I will read the body of the verdict form to you.

“We, the Jury, duly empanelled and sworn to try the above-entitled action, unanimously answer the questions submitted to us in this verdict as follows:

QUESTION NO. 1: Was the defendant convicted of a felony offense of Attempted Assault II, in the County of Washington, Oregon, Case No. C102682CR?

ANSWER: YES _____ NO _____

QUESTION NO. 2: Was the defendant convicted of a felony offense of Forgery, in the County of Nez Perce, Idaho, Case No. CR2002-001555?

ANSWER: YES _____ NO _____”

Once you have answered the question, your presiding juror should date and sign the verdict form and advise the bailiff that you have reached a verdict.

RESET (Clerk, check if applicable)

ORIGINAL OF THIS DOCUMENT TO IDOC

Assigned to:

Assigned:

Second Judicial District Court, State of Idaho
In and For the County of Nez Perce
ORDER FOR PRESENTENCE REPORT AND EVALUATIONS

2014 OCT 7 AM 10 08

Case No: CR-2014-0004601

STATE OF IDAHO

Plaintiff,

VS.

Toby Glenn Weatherly

1325 Libby

Clarkston, WA 99403

Defendant.

PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

CHARGE(s):

118-2403 F Theft-Grand

118-3125 F Fraud-Possession of Financial Transaction Card,
Number and/or FTC Forgery Devices

119-2514 Enhancement-Persistent Violator

REQUIRED ROA CODES: (Enter the appropriate code)

PSIO1- Order for Presentence Investigation Report (only)

PSMH1- Order for Presentence Investigation Report and
Mental Health Assessment

PSSA1- Order for Presentence Investigation Report and
Substance Abuse Assessment

On this Tuesday, October 07, 2014, a Pre-sentence Investigation Report was ordered by the Honorable Jay P. Gaskill DJ to be completed by 11-13-14 for Court appearance on Thursday, November 20, 2014 at: 02:30 PM at the above stated courthouse.

☒ Waiver under IC 19-2524 2(e) allowing assessment and treatment services by the same person or facility

☐ Behavioral Health Assessments waived by the Court (PSIO1 ROA Code)

Other non-§19-2524 evaluations/examinations ordered for use with the PSI:

☐ Sex Offender ☐ Domestic Violence ☐ Other _____ Evaluator: _____

DEFENSE COUNSEL: Kwate Law Office PD 2014 Greg Hurn

PROSECUTOR: April A Smith

THE DEFENDANT IS IN CUSTODY: ☒ YES ☐ NO If yes where: APC Jail

PLEA AGREEMENT: State recommendation

WHJJ/JOC ☐ Probation ☐ PD Reimb ☐ Fine ☐ ACJ ☐ Restitution ☐ Retained Jurisdiction

☐ Other :

Date: 10/7/14 Signature: _____

Judge

DEFENDANT'S INFORMATION: PLEASE PRINT

DO YOU NEED AN INTERPRETER? ☐ NO ☐ YES

Name: _____ ☐ Male ☐ Female ☐ RACE: _____ ☐ ETHNICITY: _____

Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____ Marital Status: _____

Veteran Status: ☐ Active ☐ Veteran ☐ None E-mail: _____

Address: _____ City: _____ State: _____ ZIP: _____

Telephone: _____ Message Phone: _____

Employer: _____ Work Phone: _____

Date of Birth: _____ Social Security Number: _____ Place of Birth: _____

Name & Phone Number of nearest relative: _____

It is your responsibility to contact your assigned Pre-sentence Investigator. Please contact your assigned Investigator to schedule an interview using the above information. Please have your Pre-sentence Investigation Personal History Questionnaire filled out completely for interview.

COURT MINUTES

CR-2014-0004601

State of Idaho vs. Toby Glenn Weatherly

Hearing type: Sentencing

Hearing date: 11/20/2014

Time: 2:54 pm

Judge: Jay P. Gaskill DJ

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: April Smith

25400 Defendant present, in custody, with counsel.

25609 Mr. Hurn has reviewed the PSI with Defendant.

25621 Mr. Hurn addresses the Court re: corrections to the PSI.

30043 Mr. Hurn calls Nicholas Weatherly, sworn, Mr. Hurn begins direct examination.

30734 Witness steps down.

30749 Mr. Hurn makes statement.

31352 Ms. Smith makes statement.


31800 Mr. Coleman takes over for Ms. Smith.

31817 Mr. Hurn responds.

31943 Court addresses the parties.

32021 Court takes under advisement and will announce sentence next Tuesday 11-25-14 at 1:30 p.m.

32041 Court recess.



COURT MINUTES

CR-2014-0004601

State of Idaho vs. Toby Glenn Weatherly

Hearing type: Sentencing

Hearing date: 11/25/2014

Time: 1:34 pm

Judge: Jay P. Gaskill DJ

Courtroom: 1

Court reporter: Nancy Towler

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: April Smith

- 13400 Defendant present, in custody, with counsel.
- 13610 Court has reviewed the letter provided by Mr. Hurn.
- 13637 Court addresses Defendnat.
- 13821 Count 1 & 2 Department of Correction 1-5 years and sentencing enhancement 1-5 years to run concurrent and the Court retains jurisdiction 365 days with no recommendation for placement, court costs \$240.00 as to each count (1 & 2) and reimbursement pd fund \$500.00.
- 14100 Mr. Hurn addresses the Court and Defendant does not want to participate in the rider program and would prefer the Court imposes the prison sentence.
- 14115 Court addresses Defendant.
- 14144 Court imposes the 1-5 year sentence as to each count to run concurrent with credit for local jail time already served toward the fixed portion of Defendant's sentence.
- 14159 Court recess.



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

FILED

STATE OF IDAHO,

Plaintiff,

2014 NOV 25 PM 2 36

PATTY O. WEEKS

CASE NO.

CR 14-04001

vs.

CLERK OF THE DISTRICT COURT

Toby G. Weatherly

W. S. Adams
DEPUTY CLERK

Defendant.

TO THE SHERIFF OF NEZ PERCE COUNTY, STATE OF IDAHO:

The above-named Defendant, appearing before this Court this day, being informed by the

Court of the nature of the charge against him/her, to wit:

Count 1 - Grand Theft; Count 2 - Criminal Possession of a
Financial Transaction Card & Count 3 - Persistent Violator Enhancement

committed on or about the _____ day of _____, 20____, in said county,

and having been duly arraigned before the Court and having been duly found to be guilty and

having stated that no legal cause existed why judgment should not be pronounced against him/her

and no sufficient cause appearing to the Court.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant is guilty of
said crime and that he/she be punished as follows: Imprisonment in the Idaho State Board of

Correction for a period of 1-5 years as to each Count to
run Concurrent

NOW, THEREFORE, YOU, THE SAID SHERIFF OF NEZ PERCE COUNTY, STATE
OF IDAHO, are hereby commanded to receive the said Defendant and detain him/her in the Idaho
State Board of Correction, until this sentence is complied with.

DONE IN OPEN COURT this 25th day of November, 20 14.

District Judge

Credit for time
already served toward
the fixed portion of Defendant's
sentence.

FILED

2014 DEC 2 PM 1 45

PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

THE STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

Defendant.

CASE NO. CR14-04601

JUDGMENT OF CONVICTION

This case having come on regularly for trial on October 6, 2014, before the Honorable Jay P. Gaskill, Sitting as Judge in the above-entitled case, with a jury duly and regularly empaneled, the defendant present in court and represented by Gregory Hurn and April Smith present on behalf of the State of Idaho.

JUDGMENT OF CONVICTION

1

The defendant was charged by Information with the crime of Count 1 GRAND THEFT, Idaho Code § 18-2403(3) and 18-2407(1)(b)(3), committed on or about December 21, 2013, Count 2 CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND FTC FORGERY DEVICES, Idaho Code § 18-3125(1), committed on about or between December 21st and 23rd, 2013 and Count 3 PERSISTENT VIOLATOR SENTENCING ENHANCEMENT, Idaho Code § 19-2514, felonies, and, a verdict of guilty to the crime of Count 1 GRAND THEFT, Idaho Code § 18-2403(3) and 18-2407(1)(b)(3), Count 2 CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND FTC FORGERY DEVICES, Idaho Code § 18-3125(1), and Count 3 PERSISTENT VIOLATOR SENTENCING ENHANCEMENT, Idaho Code § 19-2514 was rendered by the jury on October 6, 2014, and thereafter, a presentence investigation was submitted to the Court, and the Court having considered the same, and being fully advised in the premises;

On November 25, 2014, the Court asked the defendant if there existed any legal cause why judgment should not be pronounced, and Defendant replied that there was none, and no sufficient cause being shown or appearing to the Court, thereupon, the Court rendered its judgment as follows:

IT IS HEREBY, ORDERED, ADJUDGED AND DECREED that Defendant is guilty of the crime of Count 1 GRAND THEFT, Idaho Code § 18-2403(3) and 18-2407(1)(b)(3), Count 2 CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION CARD, FINANCIAL TRANSACTION NUMBER AND FTC FORGERY DEVICES, Idaho Code § 18-3125(1) and Count 3 PERSISTENT VIOLATOR SENTENCING ENHANCEMENT, Idaho Code § 19-2514, felonies, and that defendant is SENTENCED to the custody of the IDAHO STATE BOARD OF

CORRECTION, Boise, Idaho for a period of not less than ONE (1) year nor more than FIVE (5) years, consisting of a minimum period of confinement of ONE (1) year during which the defendant shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct (except as provided by Section 20-101D, Idaho Code) and a subsequent indeterminate period of custody not exceeding FOUR (4) years as to each count to run concurrent.

That Defendant shall receive credit for local jail time already served toward the FIXED portion of Defendant's sentence; and,

That Defendant shall pay court costs in the amount of \$240.50 as to Count 1 and 2 and reimburse the Nez Perce County Public Defender Fund in the amount of \$500.00, for a total of \$981.00. That payments shall be mailed to Clerk of the Court, P O Box 896, Lewiston, Idaho 83501; and,

NOTICE OF RIGHT TO APPEAL

YOU, **TOBY G. WEATHERLY**, ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within the time provided by law.

DATED this 2nd day of December, 2014, nunc pro tunc for November 25, 2014.



JAY P. GASKILL-District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing JUDGMENT OF CONVICTION was:

✓ hand delivered via court basket, or

 mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 2nd day of December, 2014, to:

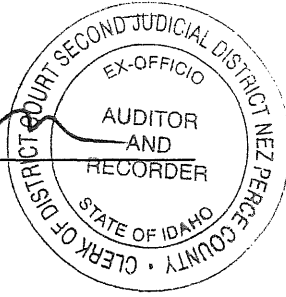
Greg Hurn
1502 G Street
Lewiston ID 83501

Prosecuting Attorney
P.O. Box 1267
Lewiston ID 83501

EMAILED TO: CCDSentencingD2@idoc.idaho.gov; centralrecords@idoc.idaho.gov and gegabrie@idoc.idaho.gov

PATTY O. WEEKS, CLERK

By WC Damm
Deputy



FILED

2014 DEC 2 PM 4 09

PATTY O. WEEKS
CLERK OF THE DIST. COURT.
[Signature]
DEPUTY

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8753

Attorney For Defendant/Appellant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	Case No. CR 2014-04601
)	
Plaintiff/Respondent,)	
)	
vs.	)	MOTION TO WITHDRAW AND TO
	)	APPOINT STATE APPELLATE
Toby G. Weatherly,	)	PUBLIC DEFENDER
)	
Defendant/Appellant.)	
)	
)	

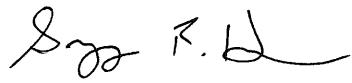
COMES NOW, Gregory R. Hurn of Kwate Law Offices, PLLC, pursuant to Idaho Code § 19-870 (1)(b), and hereby moves the court for an order appointing the State Appellate Public Defender's Office to represent the Defendant/Appellant in all further appellate proceedings and allowing Kwate Law Offices, PLLC to withdraw as counsel of record. This motion is brought on the grounds and for the reasons that the Defendant/Appellant is currently being represented by the office of the Public Defender, Nez Perce County; the State Appellate Public Defender's Office is required by statute to represent the Defendant/Appellant in all felony appellate proceedings; and it

MOTION TO WITHDRAW AND
TO APPOINT STATE APPELLATE
PUBLIC DEFENDER

is in the interest of justice, for them to do so in this case since the Defendant/Appellant is indigent,
and any further proceedings on this case will be appeals.

DATED this 2nd day of December, 2014.

KWATE LAW OFFICES, PLLC
Attorney for Defendant/Appellant

By 
Gregory R. Hurn

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of December, 2014, a true and correct copy of the foregoing instrument was:

☒ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

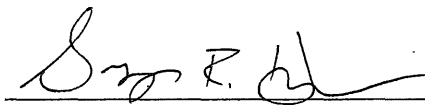
to the following:

Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

Idaho State Appellate Public Defender's Office
3050 N Lake Harbor Lane, Suite 100
Boise, Idaho 83703

Lawrence Wasden
Attorney General
Post Office Box 83720
Boise, Idaho 83720

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

FILED

2014 DEC 2 PM 4 09

PATTY O. WEEKS
CLERK OF THE DIST. COURT.
[Signature]
DEPUTY

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8753

Attorney for Defendant/Appellant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	Case No. CR 2014-04601
)	
Plaintiff/Respondent,)	
)	
vs.	)	NOTICE OF APPEAL
)	
Toby G. Weatherly,)	
)	
Defendant/Appellant.)	
)	

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND ITS ATTORNEYS, DANIEL L. SPICKLER, POST OFFICE BOX 1267, LEWISTON, IDAHO 83501, AND LAWRENCE WASDEN, ATTORNEY GENERAL, POST OFFICE BOX 83720, BOISE, IDAHO 83720-0010, AND TO THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Toby G. Weatherly, appeals against the above named respondent to the Idaho Supreme Court from the Judgment of Conviction entered in the above-entitled action on the 2nd day of December, 2014, Honorable Judge Jay Gaskill presiding.

ORIGINAL

2. That the party has a right to appeal to the Idaho Supreme Court, and the Judgment described in paragraph 1 above is appealable pursuant to Idaho Appellate Rules 11(c) (4), (9).

3. A preliminary statement of the issue which the appellant may assert on appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.

a. The denial of the defendant's motions at trial in this matter.

b. That the sentence imposed by the District Judge was excessive.

4. Is a reporter's transcript requested at this time? No.

5. The appellant requests the following documents to be included in the Clerk's record in addition to those automatically included under Rule 28, I.A.R.: The presentence report and any updates and reports from the Idaho Board of Corrections.

6. I certify:

a. That a copy of this notice of appeal has been served on the court reporter.

b. That the appellant is exempt from paying the estimated transcript fee because appellant is indigent, without funds, and the undersigned counsel has been appointed to represent the defendant.

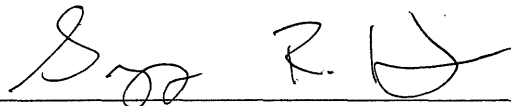
c. That the appellant is exempt from paying the estimated fee for the preparation of the record because appellant is indigent, without funds, and the undersigned counsel has been appointed to represent the defendant.

d. That appellant is exempt from paying the appellant filing fee because appellant is indigent, without funds, and the undersigned counsel has been appointed to represent the defendant.

e. That service has been made upon all parties required to be served pursuant to Rule 20 and the Attorney General of the State of Idaho pursuant to Idaho Code Section 671401(1).

DATED this 2nd day of December, 2014.

KWATE LAW OFFICES, PLLC
Attorney for Defendant/Appellant

By 
Gregory R. Hurn

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of November, 2012, a true and correct copy of the foregoing instrument was:

☒ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

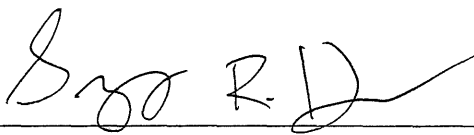
to the following:

Lawrence G. Wasden
Attorney General
Post Office Box 83720
Boise, Idaho 83720-0010

Nez Perce County
Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501

Linda Carlton
Court Reporter
425 Warner
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

FILED
2014 DEC 3 AM 11 44

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	CASE NO. CR 2014-04601
)	
Plaintiff/Respondent,	)	ORDER ALLOWING WITHDRAWAL
	)	OF ATTORNEY AND APPOINTING
vs.	)	STATE APPELLANT PUBLIC
	)	DEFENDER'S OFFICE
Toby G. Weatherly,)	
)	
Defendant/Appellant.)	
)	
)	

The attorney for the Defendant/Appellant having moved the court for an order allowing him to withdraw from her representation of the Defendant/Appellant in said matter, and good cause appearing therefor;

IT IS HEREBY ORDERED that Gregory R. Hurn of Kwate Law Offices, PLLC, and hereby is, allowed to withdraw as the attorney for the Defendant/Appellant in said matter.

IT IS HEREBY FURTHER ORDERED that the Idaho State Public Defender's Office is hereby ordered to represent the Defendant/Appellant in any proceedings for appeal in said matter.

DATED this 3 day of December, 2014.

[Signature]

Judge

ORDER ALLOWING WITHDRAWAL
OF ATTORNEY AND APPOINTING
STATE APPELLANT PUBLIC
DEFENDER'S OFFICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3 day of December, 2014, I caused a true and correct copy of the foregoing to be delivered to the following:

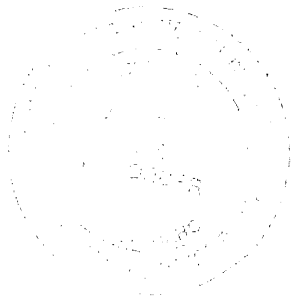
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83401
(Court Basket)

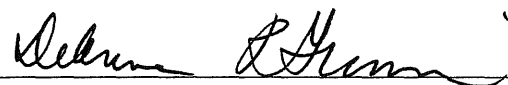
Idaho State Appellant Public Defender's Office
3050 N Lake Harbor Lane, Suite 100
Boise , Idaho 83703

Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501
(Court Basket)

Lawrence G. Wasden
Attorney General
Post Office Box 83720
Boise, Idaho 83720-0010

Patty O. Weeks,
Clerk of the District Court



By 
Deputy Clerk

Court

FILED

2014 DEC 4 AM 7 37

PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

DEC 9 2014 10:32

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

THE STATE OF IDAHO,

Plaintiff,

vs.

TOBY G. WEATHERLY,

[REDACTED]

Defendant.


CASE NO. CR14-04601

NOTICE OF CONVICTION

COMES NOW, JOE RODRIGUEZ, Nez Perce County Sheriff, pursuant to Idaho Code 20-237 and gives Notice to Pat Ogden, Department of Correction, Central Records, 1299 North Orchard, Suite 110, Boise, Idaho 83706, that the above-named defendant was committed to the custody of the Idaho Department of Corrections as evidenced by the certified copy of the Judgment of Conviction provided to IDOC, Central Records, by Clerk of the Court on 12-2-14 .

Pursuant to Idaho Code 20-237, you are further directed, as soon as possible, after receipt of this Notice to dispatch one or more guards, as may be necessary, to secure and convey the above-named defendant to the Idaho State Penitentiary.

DATED this 2nd day of December, 2014.



JOE RODRIGUEZ
Nez Perce County Sheriff

SARA B. THOMAS
State Appellate Public Defender
I.S.B. #5867

ERIK R. LEHTINEN
Chief, Appellate Unit
I.S.B. #6247
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703
(208) 334-2712

FILED

2014 DEC 29 PM 12:14

PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR NEZ PERCE COUNTY

STATE OF IDAHO,

Plaintiff-Respondent,

v.

TOBY G. WEATHERLY,

Defendant-Appellant.

CASE NO. CR 2014-4601

S.C. DOCKET NO. _____

AMENDED
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, DANIEL L. SPICKLER, NEZ PERCE COUNTY PROSECUTOR, P.O. BOX 1267, LEWISTON, ID, 83501, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Judgment of Conviction entered in the above-entitled action on the 2nd day of December, 2014, the Honorable Jay Gaskill, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

(a) Did the district court err in failing to grant the appellant's motions at trial in this matter?

(b) Did the district court abuse its discretion by imposing an excessive sentence?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).

5. **Reporter's Transcript.** ~~Is the reporter's transcript requested at this time?~~

~~No.~~ The appellant requests the preparation of the entire reporter's standard transcript as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

(a) Jury Trial held October 6, 2014, to include the voir dire, opening statements, closing arguments, jury instruction conferences, reading of the jury instructions, any hearings regarding questions from the jury during deliberations, return of the verdict, and any polling of the jurors (Court Reporter: Linda Carlton, estimation of 220 pages);

(b) Sentencing Hearing held on November 20, 2014 (Court Reporter: Nancy Towler, estimation of less than 100 pages); and

(c) Sentencing Hearing held on November 25, 2014 (Court Reporter: Nancy Towler, estimation of less than 100 pages).

6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2) and all exhibits, recordings, and documents per I.A.R. 31. The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2) and I.A.R. 31:

- (a) Affidavit of Probable Cause filed June 4, 2014;
- (b) Transcript filed June 30, 2014;
- (c) All proposed and given jury instructions including, but not limited to, the State's Requested Instructions filed September 22, 2014, Defendant's Proposed Jury Instruction filed September 30, 2014, Instructions Submitted to the Jury 1 thru 25 filed October 7, 2014, and the Instructions Submitted to the Jury 1-4 filed October 7, 2014; and
- (d) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing. Except that any pictures or depictions of child pornography necessary to the appeal need not be sent, but may be sought later by motion to the Idaho Supreme Court.

7. I certify:

- (a) That a copy of this Amended Notice of Appeal has been served on the Court Reporters, Nancy Towler and Linda Carlton;

- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That arrangements have been made with Nez Perce County who will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 29th day of December, 2014.



ERIK R. LEHTINEN
Chief, Appellate Unit

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 29th day of December, 2014, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

GREGORY HURN
ATTORNEY AT LAW
1502 G ST
LEWISTON ID 83401

NANCY TOWLER
COURT REPORTER
PO BOX 896
LEWISTON ID 83501

LINDA CARLTON
COURT REPORTER
425 WARNER
LEWISTON ID 83501

DANIEL L SPICKLER
NEZ PERCE COUNTY PROSECUTOR
PO BOX 1267
LEWISTON ID 83501

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010
Hand delivered to Attorney General's mailbox at Supreme Court


CYNTHIA R. HERRERA
Administrative Assistant

ERL/tmf/crh

TO: Clerk of the Court
Idaho Supreme Court
P.O. Box 83720
Boise, ID 83720-0101

FILED

2015 JAN 30 AM 9 41

PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

DOCKET NO. 42777

(
(State of Idaho,
(
(vs.
(
(
(Toby G. Weatherly.

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on January 30, 2015, I, Nancy K. Towler, C.S.R., lodged an electronic transcript of 31 pages in length for the above-referenced appeal with the District Court Clerk of the County of Nez Perce in the Second Judicial District.

Included therein: Sentencing Hearing, November 20, 2014.
Sentencing Hearing, November 25, 2014.

I also filed an electronic copy with the Supreme Court of the State of Idaho on the same date.

Nancy K. Towler
Nancy K. Towler, C.S.R. #623

TO: Clerk of the Court
Idaho Supreme Court
P.O. Box 83720
Boise, ID 83720-0101
Fax (208) 334-2616
supremecourtdocuments@idcourts.net

FILED

2015 FEB 18 AM 7 59

PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

RE: Docket No. 42777
State of Idaho V Toby G. Weatherly
Nez Perce County District Court No. CR 14-4601

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on February 17, 2015, I lodged a transcript of 210 pages in length for the above-referenced appeal with the District Court Clerk of the County of Nez Perce in the Second Judicial District of the State of Idaho.

Included Hearing

Jury Trial 10-6-14

An electronic copy was sent to the Supreme Court at
supremecourtdocuments@idcourts.net.

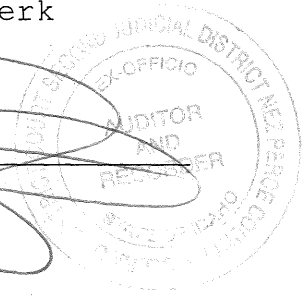
Linda L. Carlton, CSR #336

THE STATE OF IDAHO,)
)
 Plaintiff-Respondent,) SUPREME COURT NO. 42777
)
 v.) CERTIFICATE OF EXHIBITS
)
 TOBY G. WEATHERLY,)
)
 Defendant-Appellant.)

IN WITNESS WHEREOF I have hereunto set my hand and affixed the
seal of the Court this 19th day of February 2015.

By

Deputy



186

Date: 2/19/2015

Second Judicial District Court - Nez Perce County

User:
BDAVENPORT

Time: 12:16 PM

Exhibit Summary

Page 1 of 1

Case: CR-2014-0004601

State of Idaho vs. Toby Glenn Weatherly

Sorted by Exhibit Number

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
1	State's Exhibit 1 - Surveillance Video - Admitted 6/18/14	Admitted	returned to Georgia 1/30		• Submitted on DVD
		Assigned to:	[none] Nicholas Lepire		
2	State's exhibit #1 screen shot from video ADMITTED AT JURY TRIAL 10-6-14	Admitted	returned to Georgia 1/30		
		Assigned to:	Smith, April A		
3	State's exhibit #2 video from Zions Bank ADMITTED AT JURY TRIAL 10-6-14	Admitted	returned to Georgia 1/30		• Submitted on CD
		Assigned to:	Smith, April A		
4	State's exhibit #3 copy judgment of conviction county of Washington state of Oregon ADMITTED AT JURY TRIAL 10-6-14	Admitted	returned to Georgia 1/30		
		Assigned to:	Smith, April A		
5	State's exhibit #4 copy judgment of conviction and order suspending sentence Nez Perce County ADMITTED AT JURY TRIAL 10-6-14	Admitted	returned to Georgia 1/30		
		Assigned to:	Smith, April A		

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

THE STATE OF IDAHO,)	
)	
Plaintiff-Respondent,	)	SUPREME COURT NO. 42777
	)	CLERK'S CERTIFICATE
v.)	
)	
TOBY G. WEATHERLY,)	
)	
Defendant-Appellant.)	

I, Patty O. Weeks, Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that the foregoing Clerk's Record in the above-entitled cause was compiled and bound by me and contains true and correct copies of all pleadings, documents, and papers designated to be included under Rule 28, Idaho Appellate Rules, the Notice of Appeal, any Notice of Cross-Appeal, and additional documents that were requested.

I further certify:

1. That the following will be submitted as an exhibit to this record on appeal:

Confidential Presentence Investigation Report received
11/10/2014

Confidential Letter received from Heidi Weatherly dated
11/25/2014

CLERK'S CERTIFICATE

Confidential Letter received from Heidi Weatherly dated
11/19/2014

Confidential Letter Re: Toby G Weatherly from Parent

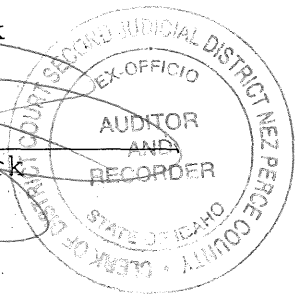
Transcript of Preliminary Hearing filed 6/30/2014

IN WITNESS WHEREOF I have hereunto set my hand and affixed
the seal of said court this 3rd day of March 2015.

PATTY O. WEEKS, Clerk

By 

Deputy Clerk



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,
Plaintiff-Respondent,
vs.
TOBY G. WEATHERLY,
Defendant-Appellant.

Supreme Court Case No. 42777

CERTIFICATE OF SERVICE

I, PATTY O. WEEKS, the undersigned authority, do hereby certify
that I have personally served by US Mail or by electronic mailing one
copy of the following:

CLERK'S RECORD

CONFIDENTIAL PRESENTENCE REPORT AND LETTERS

REPORTER'S TRANSCRIPTS

STATE APPELLATE PUBLIC DEFENDER

sthomas@sapd.state.id.us

ATTORNEY FOR APPELLANT

BOISE, ID

LAWRENCE G. WASDEN

patricia.miller@ag.idaho.gov

ATTORNEY FOR RESPONDENT

BOISE, ID

PATTY O. WEEKS
Clerk of the District Court

Date of Service

3/17/2015

By

[Signature]
Deputy Clerk

CERTIFICATE OF SERVICE

